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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 SYNTEL STERLING BEST SHORES
MAURITIUS LIMITED, SYNTEL, INC.,

4 Plaintiffs,

5 v.

15 Civ. 211 (LGS)

6 THE TRIZETTO GROUP, INC., et al.,

7 Defendants.

Jury Trial

8 -----x

October 19, 2020
10:00 a.m.

10 Before:

11 HON. LORNA G. SCHOFIELD,

District Judge

12 APPEARANCES

13 KIRKLAND & ELLIS LLP

Attorneys for Defendants/Counterclaim Plaintiffs

15 BY: MICHAEL W. DE VRIES

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Attorneys for Plaintiffs/Counterclaim Defendants

18 BY: NICHOLAS GROOMBRIDGE

JAREN JANGHORBANI

19 J. STEVEN BAUGHMAN

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1 (A jury of 8 was impaneled and sworn)

2 THE COURT: Good afternoon, everyone. That was a very
3 efficient voir dire. Thank you for getting me your lists
4 quickly. I'm ready to bring the jury in, unless there is
5 something that we need to deal with.

6 MR. GROOMBRIDGE: Your Honor, just one thing following
7 up on the discussion this morning, we have now confirmed
8 receipt of the payment. So the rebate claim can be dismissed.

9 THE COURT: Great. Thank you. So, any objection to
10 that?

11 MR. DE VRIES: No, your Honor.

12 THE COURT: So, I'll issue a written order later on,
13 but I hereby dismiss the breach of contract claim regarding
14 transition rebates.

15 MR. DE VRIES: We presume that's with prejudice, your
16 Honor?

17 THE COURT: It is with prejudice.

18 MR. DE VRIES: Thank you.

19 THE COURT: Okay. Could we have the jury, Mr. Street?

20 THE DEPUTY CLERK: Yes, your Honor.

21 THE COURT: It will feel strange not standing for
22 them, but I guess we won't.

23 (Jury present)

24 THE COURT: Members of the jury, thank you again for
25 serving in these strange and unprecedented times.

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1 Now that you've been sworn, I'll tell you about your
2 duties as jurors and give you instructions to help you
3 understand what will be presented during the trial. At the end
4 of the trial I'll give you instructions again, and those
5 instructions will control your deliberations.

6 At the end of the presentation of evidence, and after
7 my final charge to you, it will be your duty to decide from the
8 evidence in the case what the facts are. You and you alone are
9 the judges of the facts. You will hear the evidence, decide
10 what the facts are, and then apply the facts to the law which I
11 will give you.

12 My duty is to instruct you on the law, and it's your
13 duty to accept my instructions and apply them to the facts as
14 you find them. On these legal issues you must take the law as
15 I give it to you, whether you agree with it or not. If any
16 attorney states a legal principle different from any that I
17 state to you in my instructions, it is my instructions you must
18 follow.

19 You must not take anything I say or do during the
20 trial as indicating what your verdict should be. I will not
21 express or imply any opinions about which witnesses you should
22 believe, which facts are established, or what inferences should
23 be drawn from the evidence. You are the sole judges of all of
24 the questions of fact that are submitted to you. And as the
25 sole judges of the facts, you must determine which witnesses to

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1 believe, which portions of their testimony you accept, and what
2 weight to attach to it.

3 You will decide what the facts are from the evidence
4 that will be presented in court. The evidence will consist of
5 testimony from witnesses, documents and other things received
6 into evidence as exhibits, and any facts that the lawyers agree
7 to or admit or that I may instruct you to find.

8 There are two kinds of evidence: Direct and
9 circumstantial. Direct evidence is testimony by a witness
10 about what that witness personally saw or heard or did.
11 Circumstantial evidence is indirect evidence, that is, proof of
12 one or more facts from which you can find another fact. You
13 may consider both direct and circumstantial evidence in
14 deciding this case. The law permits you to give equal weight
15 to both or to none, it's up to you to decide how much weight,
16 if any, to give to any piece of evidence.

17 There's no magical formula by which you should
18 evaluate the testimony or exhibits, but I'll give you some
19 guidelines for determining the credibility of witnesses at the
20 end of the case. Right now, I would just say to bring with you
21 into this courtroom all of the experience and background of
22 your lives. You don't have to leave your common sense outside
23 the courtroom. The same kinds of tests that you use in your
24 everyday dealings are the tests that you will apply in your
25 deliberations.

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1 During the trial, I may sustain objections to
2 questions that are asked. When that happens, I will not permit
3 a witness to answer it. I will instruct that the answer be
4 stricken from the record, and that you disregard it and dismiss
5 it from your minds. In reaching your decision, you may not
6 draw any inference from an unanswered question, nor may you
7 consider testimony that I have ordered stricken from the
8 record.

9 You should not show any bias against any attorney or
10 the attorney's client because the attorney objected to the
11 admissibility of evidence or asked the Court for a ruling of
12 law.

13 You should also understand what is not evidence. What
14 the attorneys say in their opening statements, closing
15 arguments, objections or questions is not evidence. Neither is
16 testimony that I instruct you to disregard. Also, anything I
17 say is not evidence. The only oral testimony that is evidence
18 comes from witnesses. What the lawyers say in their arguments
19 to you is not evidence. For example, soon you are going to
20 hear opening statements from the lawyers, and they'll tell you
21 what they expect the evidence to show. But what they say is
22 not the evidence. And it's only what is actually introduced in
23 the trial that is evidence, and that you may consider in
24 reaching your verdict.

25 If in the course of your deliberations your

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1 recollection of the facts differs from what the lawyers tell
2 you, it is your recollection that controls. Further, anything
3 you may see or hear when the court is not in session, even if
4 you see or hear it from one of the parties or one of the
5 witnesses, for example in the hall or in the elevator, that is
6 not evidence. Only what is admitted into evidence here in the
7 courtroom in front of all of us that we all hear and see may be
8 considered evidence.

9 So let me say a word about what's called implicit
10 bias. Everyone, including me, has feelings, assumptions,
11 perceptions, fears, sympathies, generalizations, prejudices and
12 stereotypes that we may or may not be aware of. The ones we're
13 not aware of are called implicit biases. They may concern
14 race, gender, national origin, sexual orientation, class,
15 education, many kinds of issues. These hidden thoughts can
16 affect what we see and hear and how we remember what we see and
17 hear and how we make important decisions.

18 Because you're making a very important decision in
19 this case, I strongly encourage you to evaluate the evidence
20 carefully, and resist jumping to conclusions based on personal
21 likes or dislikes, generalizations, gut feelings, prejudices,
22 sympathies, stereotypes or biases. The law demands that you
23 return a just verdict, based solely on the evidence, and your
24 individual evaluation of that evidence, your reason and common
25 sense and these instructions. Our system of justice is

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1 counting on you to render a fair decision based on the
2 evidence, not on any biases.

3 So let me mention that I have imposed time limits on
4 the parties to try this case. So each side has the same fixed
5 amount of time for argument and for witness testimony. So if
6 you hear me referring to time with the lawyers, you'll know
7 what I'm talking about.

8 Please remember, also, this is a civil case. Those of
9 you who have sat on criminal cases will have heard about proof
10 beyond a reasonable doubt. This requirement does not apply
11 here to a civil case, and you should put it entirely out of
12 your mind. In civil cases the burden is different, and it's
13 called proof by a preponderance of the evidence. A
14 preponderance of the evidence means the greater weight of
15 evidence. So to prove something by a preponderance of the
16 evidence simply means to prove that a fact is more likely true
17 than it's not. I'll instruct you fully on the burden of proof
18 at the conclusion of the trial.

19 If we could have the next slide, please.

20 This is a civil action involving a business dispute
21 among companies concerning healthcare software and related
22 software consulting services. On one side, you see there are
23 two related companies: The TriZetto Group Inc., which I will
24 call TriZetto, and that's why the word TriZetto is underlined,
25 and Cognizant Technology Services Corp, which I will call

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1 Cognizant. And TriZetto is owned by Cognizant.

2 On the other side of the dispute are two other related
3 companies, Syntel Sterling Shores Mauritius, which I will call
4 Syntel Mauritius, and Syntel Inc. Syntel Mauritius is owned by
5 Syntel Inc. And when I refer to Syntel, I'm referring to both
6 of these companies that are on the right side of the screen
7 together. Next slide, please.

8 In 2010, Syntel Mauritius and TriZetto signed a Master
9 Services Agreement, which I'll call the agreement. Under the
10 agreement, Syntel Mauritius agreed to provide personnel to
11 provide services to TriZetto for TriZetto's software products
12 called Facets. Facets is a product used by insurance companies
13 to help process insurance payments to doctors and other
14 healthcare providers.

15 On November 20, 2014, TriZetto was acquired by
16 Cognizant, and Cognizant is a competitor of Syntel. On the
17 same day, Syntel Mauritius terminated the parties' contractual
18 relationship, in other words, terminated the agreement, which
19 it had a right to do, because TriZetto was acquired by a
20 competitor.

21 TriZetto asserts that Syntel took TriZetto's trade
22 secrets relating to TriZetto's Facets product without
23 TriZetto's permission, and infringed TriZetto's copyrights
24 related to its Facets product. And these are TriZetto and
25 Cognizant's claims against Syntel. Syntel denies liability.

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1 I told you that both sides are suing each other. So
2 the claims on the other side are Syntel's claims that TriZetto
3 breached their agreement by using Syntel's confidential
4 information about Syntel employees. Syntel also claims that
5 TriZetto and Cognizant unlawfully took and used confidential
6 information about Syntel employees, and that Cognizant
7 interfered with the agreement by using the confidential
8 information. Lastly, Syntel also contends that Cognizant and
9 TriZetto induced five Syntel employees to breach non-compete
10 provisions in their employment contracts. Cognizant and
11 TriZetto deny liability on these claims.

12 That's just a brief summary of the case. I'll review
13 it with you in a little more detail right now. So, I'm going
14 to tell you about some of the law that you'll have to apply to
15 the facts as you find them. These are just preliminary and
16 summary instructions, and they're to help you evaluate the
17 evidence in light of what you'll be asked to do after you've
18 heard all the evidence. The final instructions I give you at
19 the end of the trial will be more detailed, and to the extent
20 there are any differences between what I tell you now and what
21 I tell you then, my final instructions will control. Meaning
22 the final instructions are the ones you'll follow. Next slide,
23 please.

24 TriZetto claims -- this is TriZetto's first claim --
25 TriZetto claims that Syntel unlawfully took and used TriZetto's

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1 trade secrets relating to its software Facets product. This is
2 called misappropriation. TriZetto asserts two claims for the
3 misappropriation of trade secrets, one claim under federal
4 law -- and I think it is the prior slide. No, sorry, this
5 slide.

6 Okay. One claim under federal law and one claim under
7 New York law. Syntel denies that it's liable on these claims,
8 and asserts what are called affirmative defenses. And I'll
9 tell you about affirmative defenses after I tell you about the
10 claim.

11 So, more relevant to this slide: What is a trade
12 secret? That's what we are talking about here. It is
13 something that TriZetto claims to have had that provides it
14 with an opportunity to obtain an advantage over competitors who
15 do not know or use it. "Secret" means that the information was
16 known substantially only by TriZetto or others who are
17 obligated to keep the information secret, and that TriZetto
18 took precautionary measures to keep the information secret.
19 Information is not secret if it was publicly available.
20 Absolute secrecy in the sense that no one else in the world
21 possesses the information is not required.

22 Now we're on slide 8.

23 So, let me just tell you a word about note taking
24 because I see a lot of you taking your notebooks out. So,
25 you'll be entitled to take notes and I'll give you some

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1 instructions about notes in just a minute. But what I'd like
2 you to do for this first part, since we have a PowerPoint, is
3 just listen. All of this we'll go over again later in the
4 trial, and the lawyers will also go over some of it when
5 they're telling you about what the evidence will show. So, if
6 you could for the moment just pay attention to the slides and
7 my instructions.

8 So, for TriZetto to prove that Syntel misappropriated
9 the trade secrets under federal law, TriZetto must prove four
10 elements by a preponderance of the evidence. So in other
11 words, you are going to have to determine whether TriZetto has
12 proved these elements by a preponderance of the evidence:

13 One, that TriZetto owns the information at issue; two,
14 that the information is a trade secret; three, that Syntel,
15 without TriZetto's consent, acquired the trade secret knowing
16 or having reason to know that the trade secret was acquired by
17 improper means, or, disclosed or used the trade secret and
18 either used improper means to acquire it or at the time of
19 disclosure or use knew or had reason to know that the trade
20 secret was acquired through improper means under circumstances
21 giving rise to a duty to maintain the secrecy of the trade
22 secret, or derived from or through a person who owed such a
23 duty; and fourth, a trade secret is related to a product used
24 in or intended for use in interstate or foreign commerce.

25 I've talked about improper means. That includes

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1 theft, bribery, misrepresentation, breach of a contract or
2 inducement of a breach -- sorry. Breach of a duty to maintain
3 secrecy or inducement of a breach, or espionage through
4 electronic or other means, and does not include reverse
5 engineering, independent derivation or any other lawful means
6 of acquisition. That's the federal trade secrets claim.

7 There is also a trade secrets claim under New York
8 law. And the four requirements to prove misappropriation under
9 New York law are similar, but not identical to those under
10 federal law: TriZetto must prove by a preponderance of the
11 evidence what the trade secret is, in other words, TriZetto
12 must identify the trade secrets at issue; second, TriZetto must
13 also prove that it possessed the trade secret; third, that
14 Syntel used the trade secret; and fourth, that Syntel's use was
15 in violation of an agreement, confidential relationship, or
16 duty, or that Syntel used the allege trade secret as a result
17 of discovery by improper means.

18 You will have to decide whether TriZetto has proved
19 its trade secret misappropriation claims by a preponderance of
20 the evidence.

21 TriZetto also has a copyright infringement claim
22 against Syntel. Let's go to the next slide.

23 TriZetto claims that Syntel infringed TriZetto's
24 copyrights related to its Facets product. So what's a
25 copyright? A copyright is the legal protection of original

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1 works against unauthorized copying by others. Syntel denies
2 infringing TriZetto's copyrights, and asserts affirmative
3 defenses which I'll discuss shortly.

4 So, let me say something about registration. To bring
5 a civil action for copyright infringement of TriZetto's works,
6 TriZetto was required to register each work with the U.S.
7 copyright office. I instruct you that TriZetto's
8 presentations, the first two that are listed here, called Best
9 Practices and ICD-10 configuration and Facets Roadmap Review
10 are registered.

11 The parties dispute, though, and you will have to
12 determine, whether TriZetto's Data Dictionary software tool
13 satisfies the registration requirements. There are two ways
14 they can prove the Data Dictionary satisfies the registration
15 requirements. First, TriZetto can prove by a preponderance of
16 the evidence that the Data Dictionary software tool was
17 registered as a part or subpart of Facets 5.10, or TriZetto may
18 establish by a preponderance of the evidence that the Data
19 Dictionary software tool is what's called a derivative work,
20 based on Facets 5.10, and that the Data Dictionary software
21 tool incorporates protected elements from Facets 5.10 computer
22 software.

23 If you find in favor of TriZetto on that alternative
24 theory, TriZetto can bring an action for copyright infringement
25 for the protected elements from the Facets 5.10 computer

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1 software that are incorporated in the Data Dictionary software.

2 Let me tell you now about the elements of the
3 copyright infringement claim. And that's on the next slide.

4 So there are two elements that TriZetto must prove by
5 a preponderance of the evidence to succeed on its copyright
6 infringement claim. First, that TriZetto is the owner of valid
7 copyrights in the TriZetto works at issue; and second, that
8 Syntel copied original elements from the copyrighted works. I
9 will discuss these elements in turn.

10 So first, ownership of valid copyrights. To prove the
11 first element, legal ownership of a valid copyright, TriZetto
12 must prove by a preponderance of the evidence that TriZetto's
13 works are original, independently created by the author and not
14 copied from other works, and possess a minimal degree of
15 creativity, and TriZetto's works were created by TriZetto's
16 employees within the scope of their employment.

17 As to this other element, copied original elements --
18 and that's on the next slide -- it must be proved that Syntel
19 copied original elements from the copyrighted works. TriZetto
20 must prove this by a preponderance of the evidence, and may
21 demonstrate copying directly, for example, a witness who
22 testifies that Syntel copied original elements. TriZetto may
23 also prove copying indirectly, by what's called circumstantial
24 evidence. If you find by a preponderance of the evidence that
25 Syntel had access to TriZetto's works, and Syntel's works and

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1 original elements of TriZetto's works are substantially
2 similar, you're instructed to find copying, unless Syntel
3 establishes that its work was independently created or some
4 other explanation for the similarities.

5 Let's move on to Syntel's next claim, which is a
6 breach of contract claim. I've just summarized for you
7 TriZetto and Cognizant's claims against Syntel. So now I'll
8 tell you about Syntel's claims against Cognizant and TriZetto.
9 As I said, TriZetto and Syntel Mauritius had an agreement
10 between them called a Master Services Agreement. Syntel
11 Mauritius claims that TriZetto breached the agreement by
12 violating the confidentiality provision of the agreement, which
13 prohibited TriZetto from using Syntel Mauritius' confidential
14 information without consent.

15 To prevail in its breach of contract claim, Syntel
16 Mauritius must prove by a preponderance of the evidence four
17 elements:

18 First, Syntel Mauritius had a contract with TriZetto;
19 two, Syntel Mauritius performed as it was required to do under
20 the contract; three, TriZetto breached the contract by not
21 doing what it was required to do under the contract; and four,
22 Syntel Mauritius was damaged by the breach.

23 As to the first element, the parties agree that the
24 Master Services Agreement is a valid contract, so you will not
25 have to decide that element, but you will need to determine the

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1 second, third and fourth elements of the claim.

2 So the next claim is Syntel's. Syntel Mauritius also
3 claims that Cognizant and TriZetto misappropriated Syntel's
4 confidential information about its employees in order to hire
5 them away from Syntel.

6 You must consider the proof against Cognizant and
7 TriZetto separately. The parties define "confidential
8 information" under the agreement to mean information that a
9 reasonable person would recognize as confidential. Matters of
10 general knowledge in an industry are not confidential, and
11 protection afforded to confidential information is lost if it's
12 disclosed to the general public.

13 To establish the claims against Cognizant and
14 TriZetto, Syntel Mauritius must prove by a preponderance of the
15 evidence that they used Syntel Mauritius' confidential
16 information for the purpose of securing a competitive
17 advantage. Because Syntel Mauritius and TriZetto were parties
18 to the agreement, for Syntel Mauritius to prevail on its
19 misappropriation claim against TriZetto, Syntel must also prove
20 that TriZetto's use of Syntel Mauritius' confidential
21 information violated a duty, independent from the contractual
22 duty under the agreement. An independent legal duty must arise
23 from circumstances outside the contract, although it may be
24 connected with and dependent upon the contract.

25 The focus is on whether a defendant violated a duty

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1 imposed on the parties as a matter of social policy, as opposed
2 to a duty that the parties agreed to in their contract.

3 So the next claim is Syntel's intentional interference
4 of contract claim. Syntel also brings a claim against
5 Cognizant called tortious interference with contract. As I
6 mentioned, Cognizant is a company that acquired TriZetto and is
7 a competitor of Syntel. Syntel claims that Cognizant
8 intentionally caused TriZetto to breach the agreement between
9 Syntel and TriZetto by inducing TriZetto to use confidential
10 information about Syntel employees to hire them away from
11 Syntel.

12 To prove this claim, Syntel must show the following by
13 a preponderance of the evidence:

14 One, Syntel had a contract with TriZetto; two,
15 Cognizant knew about the contract; three, Cognizant
16 intentionally induced TriZetto to breach the contract; four,
17 TriZetto did in fact breach the contract; five, TriZetto would
18 not have breached the contract if it had not been for
19 Cognizant's conduct; and six, Syntel sustained damages as a
20 result of TriZetto's breach.

21 The first element is not in dispute as the Master
22 Services Agreement was a contract between Syntel and TriZetto.
23 Syntel must prove that Cognizant knew about the agreement, but
24 it's not necessary that Cognizant knew about the agreement's
25 specific terms.

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1 Syntel Inc. makes separate claims against TriZetto and
2 Cognizant that each intentionally and improperly -- slide 17 --
3 interfered with the employment contracts of five employees of
4 Syntel Inc., which I will call the employment contracts.

5 To establish this claim against TriZetto, Syntel Inc.
6 must prove the following six elements as applied to TriZetto.
7 Likewise, to prove this claim against Cognizant, Syntel must
8 prove the six elements as applied to Cognizant. Syntel Inc.
9 must prove each element by a preponderance of the evidence.
10 First, that Syntel Inc. had employment contracts with the five
11 employees at the time of the interference and that TriZetto, or
12 Cognizant, depending on which one you're considering at that
13 particular time; two, knew of the contracts; three,
14 intentionally interfered with contracts; four, improperly
15 interfered with contracts; five, caused Syntel Inc.'s employees
16 to breach their employment contracts; and sixth, that Syntel
17 Inc. was damaged as a result.

18 When I say that Syntel Inc. must prove that TriZetto
19 or Cognizant intentionally interfered with the employment
20 contracts, the third element, I mean that their primary, but
21 not necessarily sole purpose, was to cause Syntel Inc.'s
22 employees to breach their employment contract, or that they
23 acted knowing that their conduct was certain or substantially
24 certain to cause Syntel Inc.'s employees to breach their
25 employment contracts.

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1 Improper interference, the fourth element, is conduct
2 that is one of the following: Fraudulent, unlawful, ethical or
3 unjustified under any circumstances.

4 So let me say a brief word about affirmative defenses.
5 An affirmative defense is a defense against a party's claim
6 that, if proven, negates liability on the claim.

7 Slide 18. Syntel asserts the affirmative defenses of
8 waiver and estoppel against both TriZetto's claims for
9 misappropriation of trade secrets and copyright infringement.
10 To establish waiver, Syntel must prove that TriZetto knowingly
11 and intentionally abandoned its right to sue Syntel for
12 misappropriation of trade secrets or copyright infringement.

13 To establish estoppel, Syntel must prove that TriZetto
14 misled Syntel to believe TriZetto would not claim that Syntel
15 misappropriated trade secrets or infringed copyrights; second,
16 that Syntel relied on this; and third, as a result, Syntel will
17 be materially harmed due to such a claim by TriZetto. And I'll
18 instruct you further on any applicable defenses at the end of
19 the case.

20 So that brings us to the subject of damages, which
21 means money. If and only if a party has proved all the
22 elements of its claim, then you must determine the amount of
23 money, if any, that you believe will fairly and justly
24 compensate that party for any injury you believe it actually
25 sustained as a proximate result of the other parties'

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1 misconduct. As I mentioned, both parties seek damages from
2 each other, and I'll instruct you further about damages at the
3 end of the trial.

4 So that is it as far as the substance. I know that
5 must have felt like a little mini law school course. Sorry
6 about that, but I did have to tell you about the law. Now let
7 me tell you a little bit about your conduct as jurors, and
8 first let me tell you about note taking.

9 So you'll see that each of you has been provided with
10 a notebook and pen. You do not have to take notes, but you may
11 if you wish. Please be sure, though, that any note taking does
12 not interfere with your listening and considering all the
13 evidence. Also, if you do take notes, you must not show them
14 or discuss them with any other juror or anyone else at any
15 time, even during your deliberations, so not before your
16 deliberations, not during your deliberations. Your notes are
17 for you alone. They're to be used solely to assist you, and
18 they're not a substitute for your recollection of the evidence.
19 The fact that one juror took notes and another one didn't
20 entitles the first juror's views no greater weight than those
21 of any other juror.

22 If during your deliberations you have any doubt about
23 the testimony, you'll be permitted to ask that the official
24 transcript, that you can see is being made right here, be read
25 to you.

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1 So Mr. Street, my courtroom deputy, will safeguard
2 your notebooks during breaks and at the end of each day and
3 secure them and no one will be permitted to review your notes.
4 After the trial is finished, I will ask you to leave your notes
5 and we will collect them and destroy them. And due to safety
6 concerns, you should not be sharing any paper or any pens. If
7 you need more paper or pens, let Mr. Street know and we'll
8 arrange to get you some.

9 If you do plan to take notes, I would like you to show
10 me what your notebooks look like. Somehow, maybe on the inside
11 of the first page or on the back, write your name so that by
12 looking at did you know it's yours. And that way you can leave
13 it with the backside up and you leave it on your chair and that
14 way we'll know whose it is and we won't touch them.

15 I also want to give you some general instructions
16 about your conduct as jurors. First, do not talk to each other
17 about the case or anyone about anything to do with it until the
18 end of the case when you're finally permitted to go to the jury
19 room to talk to each other.

20 Second, do not talk to anyone else about the case or
21 about anyone who has anything to do with it until the trial has
22 ended and you have been discharged. Don't talk to members of
23 your family, your friends, co-workers. Don't talk to anybody
24 about the case. You can tell them that you're a juror, but
25 don't tell them anything else until it's over and you have been

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1 discharged by me, but please wait until you're finished and
2 discharged.

3 Third, don't let anyone talk to you about the case or
4 about anyone who has anything to do with it. If someone tries
5 to talk to you, please report that immediately to Mr. Street,
6 my courtroom deputy. I don't think that will happen, but if it
7 does, please report it to him and I will take care of it.
8 Don't talk to anybody else about it. If that happens, just
9 tell Mr. Street.

10 Fourth, do not talk in or out of the courtroom with
11 any of the parties or the attorneys or the witnesses. So
12 people sometimes find this a little strange, but what that
13 means is not only should you not talk about the case, but don't
14 talk to them at all. And I instructed the lawyers, and I am
15 instructing them now again, don't talk to the jurors, don't
16 look at them, don't smile at them. You can't smile anyway with
17 these masks on. And they're not being rude, they're just
18 following my instructions. And the reason is that someone from
19 watching from a distance might not hear what is being said, and
20 even a pleasantry could create a wrong impression, so just
21 don't have anything to do with them.

22 Fifth, don't read any news stories or articles or
23 listen to any radio or television reports about the case or
24 anyone that has anything to do with it.

25 Sixth, do not do any research or investigation about

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1 the case on your own. So what that means is do not go home and
2 Google the names of the parties or the industry or Facets
3 software or anything like that, or my name or their names.
4 Don't do it. Don't do any research or any investigation. If
5 you really feel compelled to do that, wait until the case is
6 all over and you can do it to your heart's content.

7 Until you retire to deliberate, again, you must not
8 discuss the case with anyone, even each other. And that may
9 seem strange. We'll have a break and you'll go sit in a room
10 together and you can talk about whatever you want except the
11 one thing you have in common, which is the case. So please
12 don't talk about that until you go to deliberate at the very
13 end.

14 The parties are entitled to have you personally render
15 a verdict in the case on the basis of your independent
16 evaluation of the evidence presented here. Obviously, speaking
17 to somebody else, including your family or friends, before you
18 deliberate or exposing yourself to to other information, could
19 compromise your service in the fairness of the parties.

20 I hope that for all of you the case is interesting and
21 noteworthy. The very fact of being here at this strange time
22 is pretty noteworthy, being with the Plexiglas containers where
23 the witness will testify and attorneys will speak. Those are
24 HEPA filters to clean the air so you could see their faces.
25 But as interesting as all that is, do not pick up your phones

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1 or your iPads or any other electronic device and start typing
2 things or posting things on social media or anywhere else about
3 the trial. Don't do it in private emails, don't do it in
4 public posts, do not say anything about the trial until it's
5 over. If you find that this is being violated somehow, please
6 tell my deputy, Mr. Street, about it. Don't talk to each other
7 about it, just bring it to his attention and he will tell me
8 and I will take care of it.

9 Finally, the Court has gone to great lengths to try to
10 ensure your safety and the safety of everyone here. I would
11 ask you, please, as difficult as it is, to please continue to
12 wear your masks and maintain social distancing. And if you see
13 anybody who is not who is associated with the case, again,
14 please bring it to Mr. Street's attention so that I can do
15 something about it

16 Finally, let me tell you what is about to happen.
17 First, each side will make an opening statement. As I told
18 you, that's not evidence or argument, it's just a tool to help
19 you understand what the evidence will show.

20 Next, you'll hear from live witnesses. You'll also
21 hear from some witnesses remotely, because not everybody can be
22 here because of the coronavirus. So some witnesses you will
23 see on your screens, some witnesses you will see live from the
24 witness stand. You should not consider the ability or
25 inability of any witness to be here in person as a factor in

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1 evaluating their testimony or any part of the claims. Whether
2 a witness testifies remotely or in person should not impact
3 your deliberations at all. Instead, you should consider each
4 witness in the same way as I will instruct you.

5 After all of the testimony, I'll give you instructions
6 again on the law and I will actually hand you paper
7 instructions that you can bring with you in the jury room. So
8 don't be too concerned about understanding or retaining all of
9 what I just tried to tell you. And after I do that, the
10 parties will make closing arguments, and you'll hear from the
11 lawyers a final time when they make their arguments about what
12 they believe the evidence has shown. And then you'll retire to
13 deliberate and decide what your verdict is.

14 Please don't make up your mind at any point until
15 then, meaning until you have gone into the jury room that last
16 time and you have a chance to confer with each other and hear
17 each other's views. Keep an open mind until then. The parties
18 deserve and the law requires that you give them a full
19 opportunity to be heard

20 So I'll tell you the hours again at the end, but in
21 general you should be in the jury room by 9:45 in the morning,
22 and please allow time to get through security and temperatures
23 and all of that, and we'll sit from 10:00 to 4:00 each day
24 until we are finished

25 Now there will be one exception, and that is tomorrow,

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1 everything will be an hour later. So tomorrow I'll ask you to
2 be here by 10:30, bring you into the courtroom at 11:00 and
3 we'll sit until around 5:00. I expect the trial will be done
4 early to middle of next week. It's very likely we will not sit
5 on Friday. But depends on where we are in the trial and what's
6 happening with the witnesses, so I will advise you of that a
7 little later in the week. Please don't make plans for Friday,
8 but you may have Friday off. We'll take one break in the
9 morning, one break in the afternoon, and a break for lunch. No
10 other breaks, so please plan accordingly

11 Okay. So those are my remarks, and you won't hear
12 from me in quite a long time, I hope. And so now what we'll
13 hear are opening statements.

14 Actually, I have one other instruction. The parties
15 have asked me to read this to you before they make their
16 opening statements:

17 You will see evidence and hear argument concerning the
18 non-solicitation provision of the Master Services Agreement,
19 the agreement I told you about, including documents in which
20 TriZetto questioned whether or Cognizant could hire Syntel's
21 employees in light of that provision. Prior to trial, I
22 determined that the non-solicitation provision did not prohibit
23 TriZetto or Cognizant from hiring Syntel employees, and that
24 neither TriZetto nor Cognizant violated this provision of the
25 MSA or the Master Services Agreement by hiring Syntel

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1 employees. However, you may consider such evidence in your
2 consideration of Syntel's misappropriation claim that TriZetto
3 provided Syntel confidential employee information to Cognizant.

4 With that, we will hear the first opening statement
5 from TriZetto.

6 MR. DE VRIES: Your Honor, under the protocol, I may
7 take my mask off, is that correct?

8 THE COURT: You may. The person in the respective
9 boxes are the only people who may.

10 MR. DE VRIES: And I understand I cannot turn the
11 podium towards the jury so I will align myself as so.

12 THE COURT: That's correct.

13 MR. DE VRIES: Your Honor, may I proceed?

14 THE COURT: You may.

15 MR. DE VRIES: Good afternoon, members of the jury.
16 My name is Mike De Vries, I'm one of the attorneys that
17 represents TriZetto and Cognizant in this case. I, along with
18 my colleagues and my clients, and I know everyone that is here
19 for these proceedings, thanks you for participating in this
20 very important process during what I know are challenging and
21 unprecedented times.

22 This is a case about theft. Syntel secretly stole
23 TriZetto's trade secrets and it copied TriZetto's copyrighted
24 software. You will see the evidence that Syntel lied about
25 what it did and it tried to cover up its misconduct. Through

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Opening - Mr. De Vries

1 these proceedings we have had access to the Syntel computer
2 systems, their internal emails, their internal computer
3 repositories, and you will see evidence in this trial that is
4 largely undisputed that Syntel took my client's trade secrets
5 and knew it was wrong. And you will also see evidence that
6 Syntel continues to use my client's trade secret and
7 copyrighted technologies even today, just as of today. And at
8 the end of the trial we will ask you, based on the evidence, to
9 hold Syntel accountable for what it did. If Syntel is not held
10 accountable for this theft, this case will serve as a playbook
11 for other companies out there like Syntel who are thinking
12 about whether to take another company's technology rather than
13 investing the time and the money and the ingenuity that it
14 takes to create that.

15 I'm going to briefly summarize the evidence for you
16 here, what you'll see at trial. And as her Honor explained, I
17 cannot explain every bit of evidence that you will see, but I
18 will try to give you a roadmap for the evidence that you'll see
19 through the witnesses.

20 First, you'll see evidence about my client TriZetto.
21 TriZetto was founded in 1997 and it was merged with a company
22 called Erisco in 2000. That company created a software program
23 called Facets that I know you've heard about. And Facets,
24 along with TriZetto's other software technologies, are used by
25 large health insurance companies throughout the country, and

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1 all told, that software is responsible for health care for over
2 170 million people in this country.

3 Facets is probably not a software product that you've
4 ever heard of before, but it's all around us. It's a software
5 product that automates and manages in an automated fashion many
6 aspects of what health insurance companies do with hospitals,
7 with patients, with employers, and with doctors. Part of that
8 involves processing claims, but it also involves many other
9 aspects of the health care system. Facets automates member
10 plans and benefit elections and communications with patients
11 and doctors and hospitals and other providers. It's quite
12 literally all around us. And as I mentioned, Facets, the
13 software program, is used by many, many of the largest health
14 care country companies in the country, including Blue
15 Cross/Blue Shield, CIGNA, United Health Care, one you'll hear
16 quite a bit about, and others.

17 Now there's an important part of the Facets software
18 that you're going to hear about I would like to explain. So
19 the software itself is very, very complicated. It is millions
20 and millions of lines of computer code. It consists of
21 thousands of data tables and tens of thousands of data fields.
22 And that architecture is used to perform and automate in an
23 automated fashion many of these different activities that I
24 explained. And because of that complexity, installing the
25 software, customizing and upgrading it takes a tremendous

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Opening - Mr. De Vries

1 amount of time and effort. And it can take dozens or hundreds
2 of people months or month, beyond a year, in order to install
3 or upgrade the system because it is of such a tremendous degree
4 of complexity.

5 And TriZetto has created some very innovative software
6 tools that you're going to hear a lot about in this case, one
7 is the Data Dictionary, the other is the Code Impact Tool,
8 another are test cases and automation scripts. And these tools
9 of used in conjunction with the Facets software in order to
10 allow and improve this installation and customization and
11 upgrade process, and those tools are my clients' intellectual
12 property. They involve the trade secrets and the copyrights
13 that you'll hear about in this case.

14 And this is a software that has been around for a very
15 long time. Facets began development in 1992. As you saw,
16 that's even before TriZetto came into being. Erisco was the
17 company that originally began to develop it. But since 1992,
18 TriZetto and its predecessors have invested in excess of \$500
19 million in research and development developing the Facets
20 software, the software tools and the related technologies that
21 you're going hear about in this case. And it protects those
22 technologies in a number of different ways through intellectual
23 property protection that federal law and state law provides, so
24 federal trade secret law and state copyright law. You'll hear
25 evidence that TriZetto obtained copyright registrations, and

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1 that it goes to a number of different efforts to ensure the
2 secrecy of its trade secret technologies.

3 That brings me to Cognizant. Cognizant is one of the
4 leading, if not the leading global IT technology and services
5 companies in the world. Its world headquarters are in New
6 Jersey, its executive headquarters are here in Manhattan, and
7 it was founded in 1994. As you can see, it has many, many
8 employees, tens of thousands of employees in the United States,
9 many, many more abroad.

10 And Cognizant comes into the picture in 2014 when it
11 acquires TriZetto and its Facets software technology
12 intellectual property for \$2.7 billion. It was at the time and
13 remains today the largest acquisition that Cognizant was ever
14 involved in. And the reason for that acquisition was because
15 of the value in the intellectual property that TriZetto owns in
16 its Facets software. And you'll also see evidence that as a
17 result of this merger, Cognizant and TriZetto expected to make
18 a tremendous amount of money because of the synergy that they
19 were able to bring together between the two parties; for
20 example, they expected to make \$1.5 billion additional in just
21 the first five years after this acquisition took place.

22 So let's talk about Syntel, and I would like to
23 explain how they came into the picture. Syntel is an IT
24 staffing company. It provides what are called staff
25 augmentation services, and essentially they provide temporary

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1 labor, skilled IT labor, to come into a company and can help
2 that company out with certain things that they're working on.
3 They are paid for that. In other words, Syntel is paid for
4 providing those services, and then the companies that they
5 provide the services to, those companies continue to, of
6 course, operate their business, own the things that they worked
7 on.

8 And so here, long after Facets was developed -- so as
9 I mentioned, development of Facets began in 1992, the first
10 version was released in 1993. Some long time later in 2008,
11 when demand for Facets had really started to explode, and so
12 insurance companies around the country were really wanting to
13 expand their use of Facets, and so TriZetto entered into a
14 contract with Syntel where Syntel provided some temporary
15 staffing services. The employees that Syntel provided, they
16 had no prior experience with Facets, they were trained in
17 Facets by TriZetto, and they worked, for all intents and
18 purposes, as TriZetto employees. They would help out with some
19 of the installations with customers, they would help out with
20 some upgrades, and in time they helped out with some of the
21 development aspects of the software. In exchange for that,
22 Syntel was paid tens of million of dollars for that work. But
23 the relationship between the parties was relatively
24 short-lived, and by 2014 that relationship was over, as her
25 Honor explained, in part because Syntel terminated its

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1 agreement with TriZetto because of the Cognizant merger.

2 Now when performing services for TriZetto, not
3 surprisingly, Syntel agreed to keep everything that it did for
4 TriZetto confidential. It was exposed to certain of my
5 client's trade secrets and copyrighted technologies while
6 performing those services, but it agreed that it would keep
7 those confidential and to use those only for purposes of
8 providing those services to TriZetto.

9 But it turns out that, unbeknownst to my client,
10 Syntel came up with a secret plan in 2012, years before the
11 merger, to take my client's trade secrets and use those trade
12 secrets to compete with TriZetto in the market. I'm going to
13 show you just a couple of the very important documents that
14 you're going to see in this case.

15 This is an email from 2012, it's written by Mr. Mohan
16 Parthsarathy to Murli Reddy, Manish Mehta, and others, and he's
17 laying out a plan that, unbeknownst to TriZetto, Syntel had
18 come up with. And you can see at the bottom that the plan
19 ultimately was to go to war in 2015 years later. And I will
20 point out this was a plan that Syntel came up with before it
21 ever had any idea that Cognizant was going to acquire TriZetto.
22 And what it planned to do was to build tools and accelerators.
23 Remember I told you about the Data Dictionary, the Code Impact
24 Tool, the test cases and automation scripts. Well, the very
25 first part of their plan was to build those tools and

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1 accelerators, and the reason was that to go to war they thought
2 that they needed credentials and an arsenal. So they wanted to
3 ultimately go to war with TriZetto, who had been their partner,
4 and from TriZetto's perspective, they were working together
5 cooperatively.

6 But what Syntel needed, because it had obtained the
7 credentials by working with TriZetto, it needed its arsenal,
8 the tools, an accelerator that it was going to tell the market
9 were its differentiators. But what you will see is that
10 instead of developing those tools on their own -- and this will
11 be undisputed -- they stole my client's technology, they
12 rebranded it as theirs, and they're now selling it in the
13 market, even as of today, at a lower cost. And why? Because
14 they thought there was an addressable market, at that time \$500
15 million, a couple of years later they revised that estimate to
16 a billion dollars, and that's why they decided to take the
17 trade secrets that they had been given access to as part of the
18 providing those temporary services.

19 And you'll see document after document after document
20 that are internal presentations at Syntel that explain that the
21 key to their success was that they needed to create
22 differentiated tools; Impact Analyzer, that was the new name
23 they gave to our custom impact tool, a Data Dictionary, and
24 that they were going to use the services that they were
25 providing to TriZetto as a Trojan horse to secretly obtain

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1 access to this information. And if you fast forward to the
2 time of the merger, this was now two years later when Cognizant
3 acquired TriZetto, the importance of these tools, which they
4 had by that time been calling their own IT, was paramount. At
5 that point, as I explained, they were looking at a market that
6 was not 500 million but a billion dollars.

7 After the relationship ended with TriZetto, Syntel
8 began to advertise its own tools. It called them Syntel tools.
9 And what you'll see is that each of these tools, the D2 Data
10 Generator, they were taken taking the technology that was
11 developed by TriZetto. We will show you that the computer code
12 for Syntel's D2 Data Dictionary is literally copied. It is
13 exactly the same in its core constituent part as TriZetto's
14 Data Dictionary code. It simply copied the code. The same is
15 true for its Step-Up Probe. At the heart of that tool, Syntel
16 is using the TriZetto trade secret. This document on the
17 right, it's a rule sheet that TriZetto created, it is used by
18 that tool.

19 And similarly, Factory, a tool that they claim is a
20 repository of 3,000 Facets test cases and automation scripts,
21 if you look on the right, this is a document from the Syntel
22 files. It is literally a TriZetto document labeled
23 confidential and proprietary. So they're out there selling
24 these as their own, but the evidence will show you that they
25 were taken.

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1 And in fact, and I will come back to this in my
2 closing argument, you will see no evidence at this trial that
3 Syntel independently developed its D2 Data Generator, its
4 Factory or Step Up Probe tools, and you will see absolutely no
5 evidence that Syntel did not unlawfully copy the test cases and
6 automation scripts.

7 So what will they say? Well, if they say what I
8 expect they will, they will say that there was an amendment to
9 the Master Services Agreement in 2012 that allowed them to
10 compete that deleted a non-competition provision in the
11 agreement. That makes no sense. As a matter of contract, it
12 did not delete the confidentiality provision. They were
13 obligated to continue to use our trade secrets only for the
14 work that they performed. But there's an even more common
15 sense reason why you know that's not correct. None of their
16 witnesses told us that that is what they believed. In fact,
17 they told us that they didn't use the trade secrets.

18 This is Mr. Ankur Chadha. He was the senior director
19 of client solutions and head of the products group at Syntel.
20 We asked him whether he had access to TriZetto's information.
21 He said no, not that he knew of. He said that twice under
22 oath. But you will see email after email after email where in
23 fact Mr. Chadha has possession of TriZetto materials,
24 distributes them around within Syntel, including long after the
25 contract with TriZetto was over, and even that he's taken steps

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Opening - Mr. De Vries

1 that we believe indicated clear desire to cover up what he's
2 done. So you can see here in the subject line of his email it
3 says T dollar sign Z. By adding that dollar sign there, that
4 keeps this email from coming up in electronic searches, and we
5 believe shows a clear motive to try to cover up what he's done.

6 Similarly, here, remember this is the witness who said
7 that he hadn't been exposed to Facets information, Mr. Chadha
8 is sending emails that says attached Facets implementation
9 documents, and the name Trizetto Group, which is actually, we
10 discovered, found in a hidden header in that document, has been
11 changed to YYYYYY, again, from our perspective, a clear
12 indicator that Mr. Chadha was attempting to keep this document
13 from being discovered in electronic searches and to cover up
14 what they have done. And document after document in this case
15 shows a use of the materials that they took from TriZetto at
16 Syntel.

17 There's one other thing that you will hear a lot
18 about, and that is this neutral forensic examiner's report.
19 There was a forensic examiner, a computer specialist who went
20 into Syntel's computers, went to India to inspect those
21 computers. And what Mr. Rubin found in his inspection of the
22 computers there, in 2017, years after the termination of the
23 agreement, hundreds of TriZetto files found and hundreds of
24 TriZetto files deleted. There is no question that these trade
25 secrets were kept and used and that Syntel attempted to cover

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1 up what it did so it could not be discovered.

2 And the last thing that I will mention on this part is
3 that the merger does play into the plan in the following way:
4 When Syntel learned that Cognizant was going to acquire
5 TriZetto, it said, as you can see in the bottom of this email,
6 that one of the things that they needed to do that was already
7 in action was build Syntel capabilities very strong around
8 TriZetto products in the next two months. The program needs to
9 be rolled out immediately because once we are out from TriZetto
10 we are not having access to products, documents, manuals
11 anymore. So they knew that the access that they had been using
12 for years to build their competing tools to copy into their
13 competing services, they wouldn't have that anymore.

14 And that's what tipped us off. So when we were to go
15 back to December of 2014 after the agreement was terminated by
16 Syntel, we discovered that Syntel employees had downloaded
17 large quantities of our materials in their last couple of days
18 on the job. And one example, for instance, one employee in the
19 last few hours that he worked at our company downloaded dozens
20 and dozens and dozens of our trade secrets. We brought that up
21 to Syntel, and we said in December of 2014, in almost six years
22 ago now, you need to stop. Did they stop? No. Instead, they
23 filed this lawsuit and asserted the claims that you're going to
24 hear about next.

25 So I would like to talk about those claims. There's

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Opening - Mr. De Vries

1 no merit to the claims that Syntel asserted against my clients.
2 You're going to hear a lot about a non-solicitation provision
3 in the Master Services Agreement. And what you'll hear is, and
4 as her Honor instructed you, the Court has already determined
5 that this provision did not prohibit TriZetto or Cognizant from
6 hiring Syntel employees and that neither of my clients violated
7 this provision. There were certain hires that were made.
8 Cognizant hired some Syntel employees, and it was perfectly
9 proper to do that. There was absolutely nothing wrong under
10 the contract with them hiring those employees.

11 So what is their actual claim? Their claim is not
12 that there was a problem with Syntel -- sorry, with Cognizant
13 hiring these employees, but rather they say that TriZetto
14 shared certain information that belonged to Syntel with
15 Cognizant about these employees. That is 100 percent
16 incorrect. They're actually accusing a person. Sometimes when
17 you get into these cases it's easy to think about this as
18 companies, but there are people that appear. And Chuck Sanders
19 is in fact here. He's sitting right there.

20 What counsel for Syntel is going to tell you is that
21 Mr. Sanders provided confidential information to Syntel. And
22 that is absolutely incorrect. Information that was provided
23 belonged to TriZetto, and you will hear evidence that the
24 employees of Syntel, they were permitted to and not restricted
25 from sharing exactly this kind of information, and in fact many

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1 did publicly on websites like the LinkedIn website.

2 I'll say one other thing because I think it's going to
3 come up. There was one other claim in the case, it was around
4 transition rebates. There was a legal dispute between the
5 parties. That was part of the complaint that Syntel filed.
6 There was a dispute that involved, during this lawsuit, my
7 client disputing, for legal reasons, that claim. However, that
8 claim has now been resolved, those transition rebates have been
9 paid, and it is no longer a dispute in the case. So that
10 leaves for them, although there are a number of different
11 claims that we saw in the instructions, really this claim that
12 confidential information about employees was shared. And as I
13 said, there's no basis for that claim.

14 So that brings me to the end of my presentation and
15 where we are today. So Syntel is no longer a standalone
16 company. In 2018 it was acquired by a company called Atos.
17 They're a large IT services provider that is headquartered in
18 France. And instead of stopping the use of the trade secret
19 technologies and my client's copyrighted code, they doubled
20 down on what they have done. This is the advertisement that is
21 available on the internet right now on their website. And
22 instead of calling them the Syntel tools, they now call them
23 the Atos Syntel tools, but these tools, the Step Up Probe,
24 Factory, D2 Data Generator that they say are what gives them
25 the superior position in the market, those were all unlawfully

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1 taken from my client.

2 So finally, you will hear from our witnesses. As her
3 Honor said, what I am here to say is what I believe the
4 evidence will see. I will come back in closing argument and
5 explain to you what the evidence did show. But you will hear
6 from our witnesses, Mr. Mike Noonan, he is a software engineer
7 who works at TriZetto. He's been working on the Facets program
8 since the 1990.

9 THE COURT: You need to wrap it up.

10 MR. DE VRIES: Yes, your Honor.

11 Mr. Chuck Sanders, who I have introduced, Dr. Bergeron
12 and Thomas Britven.

13 So I will just end with this, if I may, your Honor,
14 these are our bedrock facts: So I summarized in detail what we
15 believe the evidence will show. At a high level, we believe
16 that the evidence that you will see will show that Syntel stole
17 TriZetto's Facets trade secrets and copied its copyrighted
18 technology, it lied about and attempted to conceal its theft.
19 By doing that, it avoided nearly \$300 million in R and D costs
20 that it would have had to spend if it decided to develop it
21 independently instead of taking the technologies. And that
22 even today, six years later, Syntel still has not taken any
23 steps to stop using this stolen technology.

24 Thank you for your time. I will be able to talk to
25 you again at the end of the case.

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1 THE COURT: Thank you, Mr. De Vries.

2 So we'll hear the other opening statement from whoever
3 is making it.

4 Sorry, so we need a minute to -- if you could take the
5 mic cover and then we need to wipe down the little box and
6 then, Mr. Groombridge --

7 MR. GROOMBRIDGE: I'm happy to proceed, but I wanted
8 to know if your Honor would want to take a break.

9 THE COURT: Okay, we could do a quick break. Let's do
10 ten minutes.

11 And Mr. Street, do they know where they can go?

12 DEPUTY CLERK: Yes.

13 THE COURT: Leave your notebooks there, and if you
14 file out in the reverse order of how you came in.

15 Remember, don't talk about the case. You can leave
16 your things in the courtroom or in the jury room.

17 This will be a pretty quick break since we're having a
18 short day.

19 (Jury not present)

20 THE COURT: I wanted to make sure there was nothing
21 that we had to discuss.

22 MR. GROOMBRIDGE: There is one juror, I think
23 Ms. Smith, who walks with a cane, and I think she's in -- I
24 think that's her garment there. And if it's all right with
25 your Honor, we thought it might make sense for her to get a

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Opening - Mr. Groombridge

1 seat that's closer to the exit so it's less work for her to get
2 in and out.

3 THE COURT: That's very thoughtful. And maybe,
4 Mr. Street, what we can do first thing tomorrow is put her in
5 this seat and shuffle everyone else around.

6 Thank you for the suggestion.

7 We can break until 2:47.

8 MR. GROOMBRIDGE: Thank you, your Honor.

9 THE COURT: What are we doing after that?

10 MR. DE VRIES: Your Honor, we're ready to present our
11 first witness, Mr. Noonan.

12 THE COURT: Okay.

13 (Recess taken)

14 (Jury present)

15 THE COURT: Welcome back. We have another opening
16 statement.

17 MR. GROOMBRIDGE: Your Honor, may I remove my mask?

18 THE COURT: You may.

19 MR. GROOMBRIDGE: Thank you.

20 Good afternoon, ladies and gentlemen. I'm sure one
21 thing Mr. De Vries said that we all share is a desire to thank
22 you for being here under these unprecedented and challenging
23 circumstances, so thank you.

24 Now Mr. De Vries said this was a case about theft. It
25 is not. What it is a case about is a relationship gone bad.

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Opening - Mr. Groombridge

1 What do I mean by that? This is where I want to started
2 because it's one of the most important parts of what I have to
3 say is these two companies had a relationship for seven years,
4 and it is in the course of that relationship when they were
5 working together side by side as partners that all of this
6 information, so-called trade secrets, were provided voluntarily
7 by TriZetto to Syntel.

8 And if you noticed, Mr. De Vries tried to suggest that
9 Syntel provided just some temporary staffing services. They
10 were the help. They were helping out. That's not true either.
11 They were at the heart of TriZetto's business. And if you
12 think about it, ladies and gentlemen, what happened here,
13 whether it was right or wrong, which will be for you to decide,
14 you will hear evidence that 84 employees were hired away by
15 TriZetto and Cognizant from Syntel. If they were just the help
16 and didn't really matter, why would it have been so important
17 to do that?

18 Now in that seven-year relationship, that is when the
19 vast majority of the information that we're focused on was
20 provided, and provided voluntarily by TriZetto to Syntel.
21 There was one other thing. At the end of that time there came
22 into the picture a company called UHG or UnitedHealth. You'll
23 be hearing a lot about that. And that is another place where
24 some of the information was provided. UnitedHealth is one of
25 the biggest health insurance payers in the country, and it's

KAJTSYN2

Opening - Mr. Groombridge

1 also one of biggest customers that TriZetto has, and they had a
2 whole lot of this Facets software. And there came a point
3 where they wanted to do an upgrade, and both TriZetto and
4 Syntel bid in 2014 for those services, and the customer, UHG,
5 selected Syntel, and TriZetto was mighty unhappy about it.

6 And you're going to hear evidence that as part of
7 that, Syntel got ready to provide those services and work on
8 that and said we know you have other Facets information, but
9 don't give us anything unless it's entirely authorized and
10 legitimate, and if they have a problem, if TriZetto was unhappy
11 about the information that its customer, UHG, gave to Syntel,
12 we're going to see, ladies and gentlemen, maybe they could have
13 gone to complain to their customer, but they didn't want to do
14 that, instead they're here complaining about what we did.

15 Now you also heard reference to the neutral forensic
16 examiner and you'll hear a lot about that in the trial. That
17 neutral forensic examiner looks for -- had full access to our
18 relevant computer systems, went through all of the emails,
19 looked at all of these documents. And you may be aware of
20 this, ladies and gentlemen, or not, but you'll hear about it,
21 it is possible, given the way computer systems work, to track
22 every time someone downloads a document, every time when its
23 sitting on the computer, when they open it, the computer keeps
24 a record of that. And the neutral examiner went through all of
25 those, and I will show you one of the very important things

KAJT SYN2

Opening - Mr. Groombridge

1 that he found.

2 This was a chart showing the last time when the files
3 that TriZetto was complaining about were opened or changed.
4 And you can see that the vast majority of times that that
5 happened was during that seven-year relationship. And the
6 reason for that is you're going to hear, ladies and gentlemen,
7 what was going on was that Syntel's employees were working hard
8 side by side to develop software, write software, and solve
9 problems for TriZetto. They weren't stealing the information,
10 they were using it for TriZetto's business. And at the end, in
11 2015, they were using information that they got fair and square
12 from UnitedHealth Group, from UHG. And what is really going on
13 here, I suggest, ladies and gentlemen, is that TriZetto was
14 unhappy that Syntel was competing with it.

15 Now let's talk about Syntel. Syntel is an IT company.
16 It was founded in 1980 and works in a number of industries,
17 health care, banking, manufacturing. And it provides these
18 software development customization services. Mr. De Vries
19 mentioned services like installing, customizing, upgrading
20 complicated pieces of software like Facets. Importantly,
21 ladies and gentlemen, what Syntel does not do is sell software.
22 You can't go and buy a piece of software like Facets from
23 Syntel. Syntel's business is selling the expertise of its
24 people. That's all it has. It has lots and lots of very
25 skilled engineers and technical people, and that its business

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Opening - Mr. Groombridge

1 is selling their services. And that's going to be important,
2 because if you take away Syntel's people, you take away its
3 business.

4 Now I'm going to talk here about basically three
5 things. The first thing is that relationship and how it
6 changed, then I will talk about some of the hiring that went on
7 and then talk about some of the other things that happened as
8 this contractual relationship broke down.

9 And you can really look at the history between these
10 two companies in three phases. It started back in 2007, began
11 working together, and in 2010 they negotiated the contract.
12 And you heard her Honor talk about this. This is that
13 contract. It's a huge legal document. And it was the rules of
14 the road for the relationship between the two companies. And
15 you will hear, in fact we have witnesses in the courtroom, the
16 two men who negotiated this contract, both of them will testify
17 in this trial. And after that, between 2010 and 2012, Syntel
18 was providing those services, those valuable services, to
19 TriZetto. TriZetto didn't complaint about it.

20 But in 2012, there came a change to that relationship
21 which is very important to what is going on here. And let me
22 talk about that. There was an amendment to this contract. An
23 amendment is another word for a change.

24 Let's see how that came about. In the original
25 contract there was a provision that said Syntel, you are not

KAJTSYN2

Opening - Mr. Groombridge

1 allowed to compete with TriZetto. You see that? In order to
2 prevent any misuse or disclosure of confidential information,
3 which is exactly what we're talking about in this trial,
4 service provider, that's Syntel, will not provide products or
5 services that require technical design, process or
6 architectural knowledge of TriZetto's. We can't compete with
7 them. We are going to be working with them and we'll learn a
8 lot about their product, and we can't use that to go out and
9 compete with them.

10 If that is where things stopped, then they might well
11 have something to complain about, but it's not where it
12 stopped, because in 2012 there was a change to this. And the
13 change was that TriZetto was unhappy with the deal it made two
14 years earlier. That deal required TriZetto to pay, to buy a
15 certain amount of services. In fact, it had to pay for the
16 time of hundreds of Syntel employees, and their business wasn't
17 going so well and they wanted to change that. And so they came
18 to Syntel and said let's negotiate, we want lower prices. And
19 there was a negotiation and they got the lower prices. But in
20 return, that provision and any other part of this agreement
21 that restricted Syntel from competing were deleted. So the way
22 you might think of this is Syntel said I will give you lower
23 prices, but in return I get to go out in the marketplace and
24 compete. And that is exactly what happened.

25 Now why would TriZetto have wanted to delete this

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Opening - Mr. Groombridge

1 non-competition provision? Because their business was in
2 serious trouble. This is the Syntel lawyer executives writing
3 at that time saying look, here's what is wrong with TriZetto's
4 business: Too expensive, weak post sales, poor implementation,
5 indifferent customer service. What was going on was that in
6 2012 they were having trouble in the marketplace. So that is
7 why they came and said please give us a break on the prices,
8 and that is why the non-competition provision was struck out of
9 the agreement.

10 And did you notice -- I wrote this down because I
11 thought it was important, but Mr. De Vries said that Syntel
12 came up with a secret plan unbeknownst to my client. That
13 really isn't correct. It was TriZetto who came to Syntel and
14 said let's change the agreement. They knew perfectly well that
15 they were allowing Syntel to compete with them, and now they're
16 unhappy because Syntel did exactly the thing that Syntel was
17 given the right to do.

18 (Continued on next page)

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Kaj3syn3

Opening - Mr. Groombridge

1 MR. GROOMBRIDGE: (Continuing) Let me point out to
2 you also, that Syntel even at that time wasn't trying to
3 sabotage TriZetto. Here, the highlighted pieces you see, the
4 first one talks about that's the change, the amendment. And
5 you see the next highlighted piece says "collaborate, if
6 possible." Syntel still wanted to work together as partners.
7 And the last thing it says -- and this is important -- is
8 protect TriZetto. No one was going out and destroying them.
9 But, as time ran on another couple of years, TriZetto again
10 decided it was unhappy, they wanted to change the deal, and now
11 they don't like the change.

12 Let's look at that highlighted section. This is the
13 TriZetto executives talking amongst themselves: "Our current
14 partnership does not support our financial ties," that means
15 their pay more than they wanted. Here is the key part:
16 "Educate one of our competitors with product and process
17 knowledge that allows them to better compete with us in the
18 marketplace." That's what you just heard TriZetto complaining
19 about. But what that's saying is that's the deal we struck,
20 and now they don't like the deal.

21 And here is another, this is written by Mr. Sanders
22 who is sitting with us here in the courtroom talking about
23 this. "Unfortunately, Jake Sorg" -- that he was his
24 predecessor -- "eliminated the non-compete language in its
25 entirety. I can't explain the rationale for this change."

Kaj3syn3

Opening - Mr. Groombridge

1 We'll ask him. But, I think it's clear, ladies and gentlemen,
2 they were unhappy with the deal that they struck.

3 Let's talk about the hiring that happened here. It
4 will be up to you to decide whether this was right or wrong.
5 TriZetto believed it could not recruit Syntel employees. As
6 her Honor told you, turns out they were wrong. The important
7 thing for our purposes is this is what they thought at the
8 time, because it plays into what they then did. And it turns
9 out also that TriZetto really wanted to hire Syntel's
10 employees. Here is the CEO writing in August of 2014 to one of
11 his direct reports. "If you can hire anybody from Syntel, who
12 would you pick." And there's an e-mail exchange with the CEO
13 says I really need this information right now. And when the
14 CEO wants something, you get it to them. At 9:17 on a Friday
15 night, they said they have 87 resources. 87 people from Syntel
16 and we've ranked them. Best ones we give a 1. The medium ones
17 we give a 2, and the others we give a 3. There are 33 number 1
18 grades, we'd like to hire all of those if we could.

19 Why was the CEO asking about this? That became clear,
20 because just a few weeks later, it was announced that Cognizant
21 was going to buy TriZetto. And as we're going to see, ladies
22 and gentlemen, what that really meant was now Syntel had a
23 target. Why do I say that? Because it was clear to all
24 concerned that once Cognizant was on the scene -- Cognizant was
25 one of Syntel's biggest competitors -- there was not going to

Kaj3syn3

Opening - Mr. Groombridge

1 be a place at the table for Syntel anymore.

2 And what happened then, during the course of this time
3 between that announcement in September of 2014 and the end of
4 the year, was a period of great activity. In the course of
5 this trial we'll see a whole lot of things that happened during
6 this four months. A lot of e-mails, a lot of discussions, as
7 the two parties were going back and forth to try to figure out
8 how they would separate. How their relationship would come to
9 an end.

10 And as soon as that announcement was made, Syntel's
11 employees were worried. Frankly, when you look at these, these
12 are very human concerns. This is Mr. Reddy who will testify
13 during the week, he went around and did a kind of town hall.
14 Here's what he heard. Do I need to go back to India? Do I
15 need to break my lease? What about my visa? I've just
16 arrived, my family is coming, what about relocation?

17 Why does that matter? Because these were vulnerable
18 people. It was going to be easy to pick them off. And
19 Mr. Reddy wrote to TriZetto, e-mailed them, and he said I'm
20 sorry to have to raise this, but we have a concern. We've been
21 hearing that our people have been actively contacted by
22 Cognizant. And they've received offers, it appeared to be a
23 targeted effort. What happened? TriZetto wrote back and said
24 no, no, no, we're two separate companies. Yes, they intend to
25 buy us, but for the time being we're just working separately.

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Opening - Mr. Groombridge

1 We don't know anything about what they're doing.

2 Again, in these lawsuits we get to see not just what
3 the two companies say to each other, but what they're saying
4 internally. And it turns out when you look at that, what they
5 told Mr. Reddy wasn't entirely straightforward. Because one of
6 the things here they told Cognizant is we have the confidential
7 plan to get rid of Syntel. We have to keep it confidential
8 because if they found out about it, they wouldn't like it.

9 And Cognizant, when it heard that, said can we go
10 after Syntel people and hire them. And again the response,
11 also talking amongst itself, the en masse hiring can only
12 happen after close. That means when the legal t's are crossed.
13 But, our team is keeping a pipeline of Syntel candidates warm
14 so we can make offers on close. En masse hiring is what they
15 decided they were going to do. Again, these people were just
16 the help. They were temporary staffing services. Why would
17 you go through this trouble?

18 And Mr. Sanders here said, again, turns out wrongly,
19 we can't hire them. But he said Cognizant can. Cognizant is
20 hiring as requirements for people with this experience. And
21 Cognizant wrote to Mr. Sanders and they said what we need is
22 names, locations, current role, and current pay. And everyone
23 agreed that approach was fine.

24 And Mr. Sanders worked feverishly. You'll hear from
25 him. This is the day before Thanksgiving 2014. He sends them

Kaj3syn3

Opening - Mr. Groombridge

1 this document that you see there in the lower part of this.
2 Hiring plan. In that document there is a list of literally
3 more than a hundred Syntel employees with details of what they
4 did. And for each and every one, a desired hire date. I
5 suggest you can't go on the Internet and find this.

6 Cognizant, when they got that, jumped into action.
7 They said they started hiring people, they were going full
8 throttle. And it turns out that they were targeting 128 people
9 from Syntel. And here's where they ended up in that process,
10 they hired 84.

11 And as I said, Syntel is a business, its business is
12 its people. It doesn't have software. It doesn't have
13 computers to sell. It doesn't make computers. What it sells
14 is the skill and expertise of those people. If you hire them
15 away, you harm its business. And one of the things we're going
16 to hear is testimony about not just how this happened, but how
17 much it harmed Syntel's business. That was the en masse
18 hiring.

19 Let me talk about the last thing I wanted to cover
20 which is what happened, how did these two companies deal with
21 each other during that critical four-month time when it was
22 clear their relationship was over? Syntel saw good and bad in
23 this. There were risks, they are going to lose money. The
24 revenue that they thought they would be getting from TriZetto
25 was going away. And there would be a competitive threat.

Kaj3syn3

Opening - Mr. Groombridge

1 CT -- that means Cognizant TriZetto -- together will be a
2 threat. Unmatched competitive advantage. We're going to be
3 the 800-pound gorilla of this industry.

4 On the other side you see Syntel also saw
5 opportunities. Some of the customers weren't going to like
6 having to deal with the 800-pound gorilla. One of them you see
7 there was UHG. That's part of why I think you'll hear that UHG
8 decided to pick Syntel when the two companies were bidding.

9 The CEO gets to come in here again and he personally
10 asked Mr. Sanders to step in. Jude, that's the CEO. And
11 Mr. Sanders was going to deal with the relationship with Syntel
12 during this critical few months. And you see there he says
13 follow up on the agreement if we need to play hardball. And
14 then he has a suggestion. And here's what he says. It is a
15 little bit of a stretch, but we can tie them up in a dispute if
16 necessary.

17 You see the kind of business practice that we're
18 looking at here.

19 And as her Honor told you, on November 24, Syntel
20 terminated the contract. The very next day was the first time
21 that TriZetto said Syntel had done anything wrong. And I think
22 what, ladies and gentlemen, it is up to you to draw inferences.
23 I'm not going to suggest an inference here. But, we're going
24 to talk about this in the trial. They knew what we were doing
25 when we were working together all those years side by side.

Kaj3syn3

Opening - Mr. Groombridge

1 They never once said we did anything wrong. It was only when
2 we said this contract is over, this relationship is finished.
3 And I'll come back to that in just a moment.

4 At this point now it was clear that there was no
5 longterm future to the relationship. But, in the short term,
6 TriZetto still needed Syntel. They desperately needed Syntel.
7 And one of the things that the two companies were talking about
8 is how are we going to deal with that. And you see here
9 Mr. Sanders reporting on some of his discussions, he's talking
10 to his colleagues about the negotiations he's had with Syntel.
11 He says we're not entitled to name resources. What that means
12 is, we can't say we would like these specific individuals to
13 work on our projects. Because it was Syntel who got to decide
14 who would do that. But then he goes on to say, but we've been
15 successful in getting them. What he means there is Syntel was
16 playing nice. Syntel was giving TriZetto what it wanted, even
17 though Syntel had no obligation, as Mr. Sanders candidly
18 admitted. No entitlement.

19 And here's how his colleagues responded when he
20 reported this. Here is a list of the people that will continue
21 to support us for the next few months. And one of his
22 colleagues responded, she says I'm relieved that I don't have
23 to worry about CAESI Syntel resources for a while. I wish
24 Infosys was as supportive as Syntel.

25 I think what you'll see is clear evidence that Syntel

Kaj3syn3

Opening - Mr. Groombridge

1 honored its obligations and played nice, even while this
2 campaign was going on to try to take away its employees that
3 were its lifeblood.

4 One other thing I want to talk about. Mr. De Vries
5 mentioned something about transition rebates and said it had
6 all been taken care of, and that is true. He also mentioned
7 that Syntel filed a lawsuit, and that is also true. One of the
8 things that happened in the separation was Syntel said we think
9 you owe us some money, a few million dollars, sort of like
10 severance, if you will. And TriZetto disputed that and fought
11 it in this lawsuit for five years until Friday. On Friday, it
12 decided to pay every penny that it owed. \$5 million. Rather
13 than to have to come into this court and have us talk about
14 this. And that, again, I think tells you something about
15 what's going on here.

16 So, I'll finish by describing the witnesses that you
17 will hear from Syntel. Mr. Daniel Moore, who is sitting right
18 over there. He is the chief in-house lawyer and chief
19 administrative officer of Syntel, and he negotiated this huge
20 contract and some of the other ones, and you'll hear from him.

21 Mr. Reddy. He runs this business. He is in India,
22 and because of the pandemic, he can't come here. He will
23 testify remotely.

24 Mr. Manish Mehta. He's not in India, he is in the
25 U.S. but he also can't come here. He has a new job and he's

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Opening - Mr. Groombridge

1 very graciously agreed to testify, but we will hear from him
2 remotely.

3 Mr. Plumpe is a damages expert and he will talk about
4 why in our view, with utmost respect, that number of \$300
5 million that you heard from Mr. De Vries is really divorced
6 from reality.

7 And Mr. Sheets, another damages gentleman, will talk
8 about how the harm, the monetary harm that that hiring away
9 caused to Syntel.

10 There are a number of other Syntel employees you may
11 hear testimony from or about. I can't promise you that you
12 will hear all of these people. These are Syntel's employees.
13 These people are in India. Each and every one of them gave
14 testimony in this case by deposition, which is testimony
15 recorded before the trial. And if TriZetto really thinks that
16 it wants to, it can show you these people, their testimony.
17 Because ultimately, this is about people. And when you say
18 that this a case about theft, what you are saying is these
19 people are thieves.

20 Ladies and gentlemen, it will be up to you to decide
21 that. But I think you'll agree it is actually a case about a
22 relationship that went wrong, as relationships sometimes do.

23 Thank you very much. We appreciate your service.

24 THE COURT: All right. Thank you. Would you like to
25 call your first witness?

Kaj3syn3

Noonan - Direct

1 MR. DE VRIES: Yes, your Honor. TriZetto calls Mike
2 Noonan.

3 THE COURT: Can you hear in there?

4 THE WITNESS: Yes, I can.

5 THE COURT: Great.

6 MICHAEL NOONAN,

7 called as a witness by the Plaintiff,

8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. ALPER:

11 Q. Good afternoon, Mr. Noonan.

12 A. Good afternoon.

13 Q. You've already presented us with your name. Could you
14 please tell the jury where you work.

15 A. I work in Bridgewater, New Jersey.

16 Q. Who do you work for?

17 A. I work for Cognizant.

18 Q. What is your position at Cognizant?

19 A. I'm associate vice president of software engineering for
20 Facets development.

21 THE COURT: Mr. Noonan, if I could ask you to talk
22 into the mic as close as I am, that would be really helpful.

23 THE WITNESS: Okay.

24 THE COURT: You can move it so you can be comfortable
25 and see whoever you need to see.

Kaj3syn3

Noonan - Direct

1 THE WITNESS: Okay. Is this better?

2 THE COURT: It is much better. Thank you.

3 Q. Is there a business unit at Cognizant that you work in?

4 A. Yes. It's the Cognizant TriZetto software group.

5 Q. You said that you work in Facets development. What is
6 Facets?

7 A. Facets is a core healthcare administrative platform.

8 Q. What types of companies use Facets?

9 A. Large healthcare insurance companies, Blue Cross Blue
10 Shields, for example, United Healthcare type companies.

11 Q. At a high level, what does Facets do for health insurance
12 companies?

13 A. It helps them administer their business. Everything from
14 understanding their membership, holding the members, the
15 provider information, processing claims. It's central to
16 healthcare insurance companies' business.

17 Q. How many people in the United States today have healthcare
18 programs that are managed using Facets?

19 A. Our customers have over 170 million covered lives running
20 on Facets.

21 Q. Generally speaking, what does your job entail?

22 A. So, today my job entails managing a team of software
23 developers, making sure we produce new features in the system,
24 participating in some of the high-level designs, removing
25 obstacles if there is problems to us delivering on a quarterly

Kaj3syn3

Noonan - Direct

1 release commitment.

2 Q. How long have you been working on Facets for?

3 A. Over 20 years.

4 Q. I'd like to just very briefly talk about your background.

5 Where do you currently live?

6 A. I live in Hazlet, New Jersey.

7 Q. You already said you work currently in Bridgewater.

8 A. Well, working from home since March due to COVID.

9 Q. Do you have a family?

10 A. Yes, I do.

11 Q. Do you have children?

12 A. I have four children, two stepchildren, grandchildren.

13 Q. I'd like to ask you, how did you get into the technology
14 that we're here to talk about today?

15 A. When I was 18, I started working for Prudential. It was
16 more or less in the mailroom, as a night shift control clerk.

17 Q. After the mailroom, where did you go next at Prudential?

18 A. That room processed out from the computer room, so then I
19 moved into the computer room, and started dealing with
20 mainframe programs, as far as mounting tapes, scheduling the
21 jobs to start and tracking them, dealing with microfiche and so
22 on.

23 Q. This case has to do with computer software and computer
24 tools. In that room, with the mainframe computer, did that
25 involving writing computer code and computer tools and computer

Kaj3syn3

Noonan - Direct

1 software?

2 A. Not at that point.

3 Q. So what happened next?

4 A. Prudential would give an aptitude test to certain folks,
5 and I did well on it for coding. And then they sent me to
6 their coding school in Roseland, New Jersey.

7 Q. What happened after that?

8 A. And then I had my first coding assignments at their office
9 in South Plainfield, New Jersey.

10 Q. How did you come to work on Facets?

11 A. So that time in Prudential was the early '80s. I started
12 working for a company called Erisco in 1989. They were the
13 ones that created Facets. At first, I worked on some other
14 mainframe systems that Erisco had for group administration,
15 claims administration. And then in the late '90s, I started
16 working on Facets.

17 Q. In the late '90s when you started working on Facets, was
18 that at Erisco?

19 A. Yes, that company was still Erisco, but in the year 2000
20 Erisco became part of a company called TriZetto.

21 Q. You said a few moments ago that you're currently working at
22 Cognizant. How did you come to work at Cognizant?

23 A. TriZetto was acquired by Cognizant in 2014.

24 Q. Over the years, what have your responsibilities been with
25 respect to Facets?

Kaj3syn3

Noonan - Direct

1 A. When I first went from our mainframe team on to Facets in
2 the late '90s, I was directly coding certain new features in
3 Facets. I worked on a claim archive feature, and then moved on
4 to helping design some key additional components of Facets.
5 And my work has progressed since then, you know, raising from
6 writing the code to managing the teams that write the code.

7 Q. Mr. Noonan, have you prepared demonstratives to assist with
8 your testimony today?

9 A. Yes, I have.

10 MR. ALPER: Mr. Thomas, if you could please display
11 DDX 14.2.

12 Q. Mr. Noonan, what are we seeing here on this picture?

13 A. This is a group shot of the larger Facets team, and we're,
14 this was in 2018, I believe, and we were going to be leaving an
15 office building we had been in Union, New Jersey, for over 25
16 years and move to our Bridgewater office. This was sort of a
17 going away from the building photo.

18 Q. This is a picture of your Facets team?

19 A. Yes. If you advance to the next slide, you can see me in
20 the middle.

21 MR. ALPER: Mr. Thomas, if we can now display --

22 Q. Actually, let me ask you. How many versions and releases
23 of Facets have there been over the years?

24 A. Probably upwards of many dozens, many dozens. 70s, 80s.

25 MR. ALPER: If we can see, Mr. Thomas, DDX 14.4.

Kaj3syn3

Noonan - Direct

1 Q. What are we seeing on and this slide, Mr. Noonan?

2 A. These are a series of my prior ID badges. So on the left
3 was Erisco, and then a picture of that building in Union across
4 from Kean College. And then the next badge shows the TriZetto
5 logo, that triangle. And then the right-most badges are a bit
6 more recent, they show my mustache being grayer and my forehead
7 bigger, but with Cognizant logos.

8 Q. We see down underneath the badges, we see some Facets
9 versions and releases. What are those meant to depict?

10 A. Just showing points in time. So, our Facets 2.9 release
11 went out in August of 99. 4.71 in December 2009. Or our 5.2
12 version in November 2014, and 5.6 became available in August of
13 2018.

14 Q. As associate vice president of Facets, what are your
15 responsibilities today?

16 A. So today my responsibilities involve making sure we meet
17 the commitments to our customers. They expect new features to
18 be in these quarterly releases. Overseeing some of the key
19 design decisions, dealing with our customers that are
20 upgrading. And if my team of software engineers, if they
21 encounter a problem, they'll turn to me to get that problem
22 resolved.

23 Q. How many people work on your team today in Facets
24 development?

25 A. Facets development has 208 people today.

Kaj3syn3

Noonan - Direct

1 Q. I'd like to show you another one of your demonstratives, if
2 we can see, Mr. Thomas, DDX 14.5. And if at a high level, can
3 you tell us what we are seeing to on this slide?

4 A. Sure. In the green box on the left is software. So
5 speaking about Facets and Facets upgrades software. And on the
6 right-hand side, things related to Facets, more of a services
7 nature.

8 Q. I'll follow up with some questions about each of these two
9 boxes, but are these things that TriZetto and Cognizant provide
10 to its customers?

11 A. Yes.

12 Q. So, on the Facets software side, in addition to the
13 software itself, what are Facets upgrades?

14 A. So our customers that rely on Facets use it for their core
15 business of healthcare. They rely on us for upgrades, the
16 upgrades are the changes to the software. Maybe there is a new
17 law, maybe there is a new capability, a new way to process COB,
18 or a new way to process how providers and networks should be
19 worked on.

20 So those upgrades provide new features, new
21 capabilities, and responses to regulatory requirements.

22 Q. On in the blue box on the right, what is that referring to,
23 services?

24 A. So, with Facets, we provide services to help a new customer
25 install the system. It is a big, complex system. They may

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1 actually need to do some changing how they run their business
2 to now run on Facets. So, that installation and set up is one
3 of the services that we provide.

4 Q. Does TriZetto provide the services itself?

5 A. Yes.

6 Q. Do the service people, you have a team for service?

7 A. Yes, yes, we call them the services team, yes.

8 Q. How much training does the services team need in order to
9 provide these installation and set up and upgrade services?

10 A. They get a lot of training. We've developed computer-based
11 training. There is on-the-job training, initial training with
12 a lot of oversight. We even have designations of
13 certification, are you a certified Facets claims person. You
14 know, indicating you've attained that knowledge.

15 Q. Why does TriZetto offer these installation upgrade and
16 customization of services to its customers?

17 A. Facets is complex. The health insurance is complicated.
18 And with this training, we can do it more efficiently, and it
19 makes sense for those health insurance companies to turn to us
20 for those services.

21 Q. I'd like to focus on a couple of the bullet points within
22 the blue box under services. That second bullet says DBBLD,
23 and upgrade framework. What does that refer to?

24 A. So, DBBLD, we'll often refer to that as "DB-Build." And
25 this is something we've built, it's specific to the Facets

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1 database. So when you asked me earlier about upgrades, with
2 each of those upgrades we tend to make changes to the database,
3 and in our versions and releases that were in the 4 series,
4 DBBLD was the utility that made the corresponding database
5 changes to also work with that new release. So our 4s all the
6 way through 5.0 would rely on DBBLD. After that, we developed
7 upgrade framework, which, while accomplishing the same thing,
8 could do it in much less time.

9 Q. If we look at the next bullet down, we see something called
10 Data Dictionary and Custom Code Impact tool. What are those?

11 A. The Data Dictionary is something we built. We'll refer to
12 it as the Facets Data Dictionary. It contains information
13 about our database. It gives in more plain English what's a
14 logical description of an otherwise abbreviated field name,
15 information about its attributes, is it key or not, some of the
16 valid values for a field. So it's a very important tool that
17 we have. And the custom code impact tool, that comes into play
18 in that with all the features Facets has, and brings to health
19 insurance companies, there's typically other things they need
20 to do around it. Maybe they need to feed an accounting system,
21 maybe they want to load some data to it, maybe they want to
22 create some custom reports. And the Custom Code Impact tool
23 helps identify what has changed between a series of versions
24 and releases in the database. That can be very helpful to them
25 to then say, oh, if these database changes occurred, what if my

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1 custom code looks at those tables in the database. Where do I
2 need to focus my attention in remediating some custom code as I
3 upgrade. It makes use of information from the Data Dictionary
4 as well.

5 Q. If we go to the next bullet, testing and automation
6 scripts, what does that refer to in the context of services?

7 A. So we'll provide services, and these speak to verifying
8 that the system's working as designed. It could be after a big
9 upgrade, maybe some configuration has gone into the system.
10 And these are more or less tests specific to Facets, specific
11 Facets steps to help verify functionality.

12 THE COURT: I'm going to interrupt for just a second
13 and invite everybody, even though we don't do this during
14 COVID, to stand up and stretch.

15 Sorry to interrupt. You may proceed.

16 MR. ALPER: Thank you very much, your Honor.

17 Q. So, Mr. Noonan, let's take a look at that last bullet,
18 reference manuals and guides. What does reference manuals and
19 guides refer to?

20 A. The Facets reference manuals and guides. So these are a
21 wealth of documentations that speak to how to install Facets,
22 how to set it up, how to configure it, talks about the
23 underlying data within it. It is very important to people that
24 are running their business on Facets, it's very important to us
25 internally. Very important to our services team, as they

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1 support our customers with Facets.

2 Q. These software tools and the reference manuals and guides,
3 are those things that are publicly available?

4 A. No.

5 Q. What does TriZetto do to keep those materials confidential?

6 A. There's copyrights, we -- we make these available via a
7 special portal. We call it our customer exchange website.

8 Anybody that tries to get, you need an assigned ID and password
9 to have access to these. So, we go through a number of steps
10 to keep these things secure.

11 Q. When TriZetto provides these items to say a customer or one
12 of its contractors, do they need to agree to a non-disclosure
13 agreement?

14 A. Yes.

15 Q. They need to agree to keep those confidential?

16 A. Yes.

17 Q. You just mentioned about providing these via a website.

18 How does TriZetto provide access to the reference manuals and
19 guides to its customers?

20 A. So, that customer exchange website, when a customer buys
21 Facets, we designate someone or a small number of people at
22 that customer site as the super user of customer exchange at
23 that company. And they have the responsibility to make sure
24 that other employees of that company, that they then give
25 access, follow our restrictions about maintaining the copyright

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1 and permitted use of these materials.

2 So, we grant it to a customer, and customer's
3 employees then can obtain this information from the customer
4 exchange.

5 Q. Can anyone go on the Internet and get into the customer
6 exchange?

7 A. No, they would be stopped. They would need a specific ID
8 and password to be able to get in.

9 Q. Is it important to TriZetto's business that the software
10 tools and documentation that you have been discussing be kept
11 secret?

12 A. Yes, yes, these are our trade secrets. This, these are the
13 assets of our business. So, this is the culmination of our
14 decades of work, and this is what drives our business.

15 Q. If one of your competitors on the services side of the
16 business was able to have access to those tools and reference
17 manuals and software, and use them for purposes for which they
18 were not permitted, how would that impact your business?

19 A. That would be detrimental to our business. That, that
20 would hurt our business.

21 Q. I think you mentioned this in one of your answers a moment
22 ago. Are these materials, the software, the software tools and
23 the reference manuals and guides, are those TriZetto's trade
24 secrets?

25 A. Yes.

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1 Q. In addition to keeping TriZetto's technologies protected as
2 trade secrets, does TriZetto protect its technologies in other
3 ways?

4 A. I know we make use of copyright, copyright registrations,
5 and such.

6 Q. I'd like to talk a little bit more about how Facets impacts
7 people and ask you, is Facets -- so you've talked about how
8 Facet is used by the health insurance companies, right?

9 A. Yes.

10 Q. Okay. Is Facets something that also affects the lives of
11 people out in the world?

12 A. I think so. Yes.

13 Q. How is that?

14 A. Well, in, I know for myself, I have insurance through my
15 company, and I know that the health insurance company that I
16 picked they make use of Facets. So, I know that if I want to
17 hit their website to find a doctor in the network that I can do
18 that, I know that if I see a doctor, that that claim is going
19 to be paid accurately. If I needed something with a
20 preauthorization or a referral, that will be processed quickly,
21 I shouldn't have to wait as long. So, I think those things,
22 you know, it makes it a nice place to work because I get to in
23 some ways make use of what we've built.

24 MR. ALPER: Mr. Thomas, if we can show DDX 14.6.

25 Q. Mr. Noonan, what are you showing on the top half of this

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1 slide?

2 A. So, on the top half showing some of the things that we've
3 heard back from our customers as they take on running their
4 business in Facets. That there were reductions in time for
5 processing claims, and significant reduction in the claims
6 backlog.

7 Q. Have you experienced over 75 percent time savings as a
8 result of using the Facets software with your customers?

9 A. They've been able to process more claims in less time.
10 Yes.

11 Q. In terms of the insurance companies' businesses, and the
12 bottom line, what does processing more claims in less time
13 mean?

14 A. Well, when they're processed accurately the first time, and
15 there's less people that have to manually work the claims, all
16 of those things contribute to savings, administrative savings,
17 they're sometimes referred to as. And also via technology, a
18 lower total cost of ownership. So all of those things, you
19 know, relate to dollars saved, many dollars saved, which allows
20 them to have -- push lower premiums, and make lower premiums
21 available, and again, again to improve that access to
22 healthcare.

23 Q. I was going to ask you. How do those savings impact people
24 out in the world?

25 A. Instead of paying to work a backlog of claims, they are

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1 able to push more dollars towards other programs that a health
2 insurance company may wish to pursue. Maybe you get the
3 information about healthier living or time for a checkup. And
4 or even just the simple aspect of less of a delay if you're
5 trying just to get a referral or a preauth or find out the
6 status of a claim.

7 THE COURT: Can I ask a question. Sorry, I missed the
8 topic sentence.

9 Here what caused all these savings?

10 THE WITNESS: By making use of Facets as a core
11 administrative platform, compared to using perhaps a legacy
12 system, more manual systems. So very often, when Facets comes
13 into a health insurance company's offices, there's things that,
14 oh, they used to do this manually. Every claim.

15 THE COURT: I didn't mean to hijack the testimony. I
16 just wanted to make sure I understood. Thank you. That's
17 helpful.

18 THE WITNESS: You're welcome.

19 Q. Mr. Noonan, I am going to switch gears here. Have you
20 heard of Syntel?

21 A. Yes.

22 Q. When did you first hear about Syntel?

23 A. That was in the mid 2000s.

24 Q. What were the circumstances that you came to know Syntel?

25 A. Our company entered into an agreement with Syntel in that

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1 our business was growing, we had a lot of Facets sales, and as
2 part of that, that was a higher demand for services, a higher
3 demand for software development, too. And Syntel was going to
4 be hired on to supply some labor.

5 Q. Was Syntel the only company that TriZetto has had a
6 relationship with over the years for surplus labor?

7 A. I know, I know we've also worked with Infosys, we've worked
8 with another IT services company called EPAM.

9 Q. Does TriZetto still use service providers like Syntel to
10 provide services to its Facets customers?

11 A. Largely no.

12 Q. Why is that?

13 A. Well, when we were acquired by Cognizant, Cognizant is a
14 much larger IT services company, and they have the people.

15 Q. Back when TriZetto was working with Syntel, did TriZetto
16 have an agreement with Syntel allowing Syntel to provide
17 services to TriZetto's Facets customers?

18 A. So yes, there was an agreement where, working as
19 subcontractors, Syntel could provide those services.

20 Q. Do you know the name of that agreement?

21 A. A Master Services Agreement.

22 Q. Do you have personal knowledge of Syntel's work for
23 TriZetto when Syntel first began working with TriZetto?

24 A. Yes, yes, I was there.

25 Q. Now, when Syntel first started working on Facets with

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1 TriZetto, what experience did the Syntel folks have with
2 Facets?

3 A. In my experience, they were very limited. A lot of folks
4 were just out of college, very often this was their first
5 corporate job right out of college. So, really no experience
6 with Facets.

7 Q. How did the Syntel folks learn to provide Facets services?

8 A. We trained them.

9 Q. Did you personally train Syntel personnel on the Facets
10 architecture?

11 A. Yes.

12 Q. What of TriZetto's confidential software, software tools,
13 documentation, did the Syntel people have access to?

14 A. All of it.

15 Q. For what purpose was Syntel provided access to those
16 confidential materials?

17 A. Well, they were going to be working just like us, you know.
18 The message we had for management was, you know, we're a team,
19 and these people from Syntel were going to be working with us.
20 So to accomplish the same jobs, they needed the same access.

21 Q. Was Syntel allowed to do anything it wanted with the
22 TriZetto confidential software and tools and documentation?

23 A. No, no. Like all of us, it should be what is your assigned
24 job, and if you need a certain manual for that job, well then,
25 that make sense for you to access it.

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1 Q. Those were jobs assigned by TriZetto to Syntel?

2 A. Yes.

3 Q. Are you aware of TriZetto's allegations against Syntel
4 concerning Syntel's theft of TriZetto's confidential software,
5 software tools, and documents?

6 A. Yes, I am.

7 Q. What impact have Syntel's actions at issue in this case had
8 on you and your business?

9 A. It -- I'm sort of an even-keeled guy, and it took me a
10 little bit to realize it. But almost like that Claritin moment
11 where the commercial, they peel a layer off and then you see
12 clearly that, wow, these materials were taken, and were now
13 going to be potentially used against us to compete with our
14 services business. So, it -- it was a shock personally, and
15 it, you know, I realize it can compromise some of our business.

16 Q. The people, the folks at Syntel involved here, these were
17 people you and your colleagues trained to learn about those
18 materials?

19 A. Yes.

20 Q. Let me ask you, how long have you personally been working
21 on technologies in the software and the software tools and the
22 documentation that are the subject of TriZetto's claims against
23 Syntel in this case?

24 A. Over 20 years.

25 Q. Did you sign a confidentiality agreement as part of your

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1 employment at TriZetto?

2 A. Yes, I did.

3 Q. What is your understanding of your obligations under that
4 agreement?

5 A. Well, I understand that what I've built, the company owns,
6 and that I can't take it home and use it for other things.

7 Q. As an employee of TriZetto who signed a confidentiality
8 agreement, are you allowed to use TriZetto's software and tools
9 and other trade secret information for any purpose that you'd
10 like?

11 A. No.

12 Q. Let me ask you, Mr. Noonan, did you ever tell Syntel that
13 it could keep the materials, the trade secret materials, and
14 use them for any purpose that they want?

15 A. No.

16 Q. Are you aware of anyone at TriZetto or Cognizant who ever
17 told or even implied to Syntel that Syntel could use your trade
18 secrets for any purpose that it would like?

19 A. No.

20 Q. All right. I'd like to switch gears and if we could, I'd
21 like to ask you a few more detailed questions about Facets now.

22 MR. ALPER: If we could see DDX 14.7., Mr. Thomas.

23 Q. Let me ask you, before Facets, how were insurance companies
24 administering their health plans?

25 A. Some may have been doing things with paper, others had,

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1 whether you want to call them a legacy system, a homegrown
2 system, or maybe some other, an older system that wasn't as
3 flexible and scalable and less able to keep up with changes in
4 healthcare.

5 Q. What were some of the issues that came up in connection
6 with sort of the manual approach to handling claims and
7 insurance plans?

8 A. Well, when things are done manually, there's human error
9 creeps in, as much as people try, and if there is standard
10 operating procedures, there is still a typo. There are still
11 things that get processed wrong. Sometimes things can be
12 physically misplaced or misrouted. So, those were some of the
13 problems.

14 Q. What about some of the problems when insurance companies
15 would attempt to have their own sort of legacy system software?

16 A. I know that some of our customers today had prior systems
17 that over time they just found them very difficult to maintain.
18 They weren't in the primary business of software development.
19 So, while they had development teams, they may have had an
20 architecture of a system that just didn't adapt to change well.
21 As healthcare changed and new things were needed in the
22 marketplace, it became difficult to maintain those older
23 systems.

24 Q. How does Facets, with that background, how does Facets fit
25 into an insurance company's business?

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1 A. Well, with Facets, Facets is able to satisfy that need. So
2 with Facets, there is a community of customers asking us for
3 the next changes, we're doing those changes. All the customers
4 now get the benefit of those changes. So, we have teams
5 keeping up with the regulatory requirements, getting those
6 changes into the software, becomes more economical to those
7 customers in that while we do it, and yes, we're selling it to
8 them, but we can spread that cost over all those customers.
9 Where it would be really expensive for them to do it all of
10 that work but just for themselves.

11 MR. ALPER: If we could, Mr. Thomas, look at DDX 14.8.

12 Q. Could you describe, Mr. Noonan, what we are seeing here
13 with reference to how Facets fits into your insurance
14 customers' businesses?

15 A. Sure. Sure. So here's a perspective more from that health
16 plan insurance company. So, on the far left, there's options,
17 different plan products, it is open enrollment time, so someone
18 might be familiar with do they want the 80 percent plan or the
19 high deductible plan. So someone picks that, let's their
20 employer know. In the center that's just depicting all
21 employees letting the employer know what they picked, what
22 plans they picked. And then forwarding that to that health
23 insurance company using Facets.

24 And at that point, there is a lot of works that goes
25 on accepting that information and understanding their plans.

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1 Are there dependents, what are the coverages they pick, what's
2 the related premiums that go on with that.

3 MR. ALPER: If we can now, Mr. Thomas, look at DDX
4 14.9. Actually go back to 14.8 for a moment.

5 Q. The frame on the far right, that's at the insurance
6 company?

7 A. Yes.

8 Q. Who is sitting there at the desk?

9 A. That would be one of the Facets customers. One of the
10 health plan insurance company employees.

11 Q. And they're actually operating the Facets software to
12 receive the health plan information?

13 A. Yes.

14 Q. If we can now go back to DDX 14.9. Does this depict
15 another way that Facets is used by health insurance companies?

16 A. Sure. A big part of Facets is processing claims. So this
17 is that common example of someone goes to the doctor, the
18 doctor is going to send in a claim with specifics, what was the
19 diagnosis, what were the procedures, what's the charge, dates
20 of service and so on. So that information, very often it's
21 electronic these days and not paper. But that gets to Facets.

22 And on the far right, again, showing how Facets is
23 that system processing the claims, pulling together what was
24 the coverage this person picked, as well as what's the
25 information that that health insurance company negotiated with

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1 providers. In certain networks, what was those pricing
2 agreements, looking at claims history and so on.

3 So all of that processing within Facets, and the
4 majority, the vast majority of the time claims are processed
5 without human intervention. But, certainly there are instances
6 where people are working those claims that need further review.

7 Q. You've been talking about Facets generally. Are there
8 specific feature areas that are important to the operation of
9 Facets?

10 A. Yes, there are.

11 MR. ALPER: Mr. Thomas, if we can pull up DDX 14.10.

12 Q. And at a high level, what are we seeing on the two sides of
13 this slide?

14 A. Well, similar to what we were talking about just a moment
15 ago, on the left-hand side, some of the things more with
16 insurance plan management, and on the right more focused on
17 claims adjudication.

18 Q. Let's take a look at the feature areas under insurance plan
19 management. What are these green boxes and the circle, what
20 are they meant to represent?

21 A. So, as we developed Facets, we'll refer to areas of it as
22 domains. So central is the member domain. Just keeping track
23 of members, subscribers, all that information. And some of the
24 others are important like billing, you know, we need to
25 understand the premium for what those members selected for

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1 their coverages and such.

2 Q. In the member domain, what are some examples of the types
3 of information that you keep track of and are updating in the
4 member domain?

5 A. So certainly it's what we call demographics, where do you
6 live, birth dates, some premiums vary based on age. Whether
7 there's other insurance, perhaps a spouse also has insurance,
8 so that's COB. Other carrier information becomes very
9 important. Within the member domain, we keep track of what we
10 call eligibility, what things were they eligible for at certain
11 times.

12 Q. Just to pick another one of the boxes around under
13 insurance plan management, what does "commissions" refer to?

14 A. So, you might not think about it, but if your employer has
15 insurance with a large health insurance company, there may have
16 been a broker, an agent that helped place that business with
17 that insurance company, and then they'll get a commission based
18 on the premium that we calculate. So, commissions is another
19 area of Facets. That helps that health insurance company pay
20 the commissions to their brokers that sold business.

21 Q. If we go over to the claim adjudication side. What is
22 claim adjudication?

23 A. Adjudication is just our perhaps fancy word for processing
24 the claim.

25 Q. There is a circle in the middle on the claim adjudication

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1 side called claims. What feature area does that refer to?

2 A. Claims are so central to Facets. That's why it's in the
3 center here. And it speaks to the wealth of information that
4 can come in on a claim. A claim could be pretty simple and
5 small, but there's hospital claims that could have hundreds and
6 hundreds of lines and information from a hospital, all sorts of
7 different revenue codes. So claims in that box talking to the
8 information about claims, how to process claims, and then get
9 payment back out to providers.

10 Q. Let's just pick a couple of other examples here to
11 illustrate. If we go to the left of claims, we see a box
12 called HIPAA privacy. Let me ask you a question before we talk
13 about that box. Is the privacy of the confidential information
14 of the patients out in the world, the individual subscribers or
15 members out in the world, is that important to TriZetto?

16 A. Very important.

17 Q. So how does the HIPAA privacy box relate to that?

18 A. This is an area that makes sure that only the people with
19 the appropriate access can get access to claims information.
20 If someone was to call up and say, I want to look at your
21 claims information, this is able to say, like, Mike's not an
22 authorized person to look at your claims information and would
23 not allow that.

24 Q. By the way, I should have asked this earlier. What is a
25 member? What does a member refer to in the health insurance?

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1 A. One of the people, one of the insured people that are being
2 held within the Facets system and processing.

3 Q. Let's go over to the right of claims, there is the box
4 called work flow. What is work flow?

5 A. Work flow is a good part of Facets in that, while we have a
6 high rate, a first passed rate. As these claims come in, they
7 get processed untouched by human hands, there are still things
8 that a health plan might do. They might say if this is over a
9 certain dollar amount, I want a person to look at this claim.
10 I don't want it to just pass through. Or perhaps when a
11 provider sent the claim in, they typed something wrong and it
12 is illogical and there is an error on that claim.

13 So what work flow can do is it can look at what were
14 the reasons that the claim pended. That's the phrase we'll use
15 if it didn't process completely. Pended. And it can route
16 them into certain queues. And then there's workers assigned to
17 work those queues. So the health insurance company has
18 knowledge workers that would be more familiar with how to
19 process a high dollar claim. They've had extra training, what
20 should they look for before they let it proceed.

21 For example, if something was miskeyed on a claim,
22 they can help identify that resolution, contact the provider,
23 so that can get corrected as well.

24 So, in the past, maybe things that pended would just
25 be printed out on a list. Maybe they'd have to rip up the

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1 paper report and pass it around. With work flow, that's
2 automated within the system, that routing, to the point that
3 people working those queues of certain types of claims, they
4 can hit a key. Get next. And they go on to the next one
5 that's routed to them.

6 Q. Does that work flow functionality help patients get their
7 claims paid faster?

8 A. Oh, yes.

9 Q. Just lastly, if we go up above claims, we see there's a box
10 that's called open access. What does open access refer to?

11 A. Open access, it is a newer name for what we used to call
12 FXI. And that's the area of Facets that wraps up a lot of our
13 business logic into web services.

14 So, this allows, in one popular example, our health
15 insurance companies that perhaps have a portal that lets people
16 look at, hey, what are my claims. Let me see a list of my
17 claims. So I know my health insurance has Facets, and I know
18 if I go to their website and I sign on with the ID and password
19 I have with them, underneath that, if I want to look at claims,
20 it is executing a Facets list claims service. Going into
21 Facets, finding my claims, and then showing them.

22 (Continued on next page)
23
24
25

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1 BY MR. ALPER:

2 Q. Now is your company the company that makes the decision
3 about whether a claim gets paid or not?

4 A. No, that -- while we make the software and we assist the
5 companies with services in running the software, it's up to the
6 health insurance company to configure it and make decisions on
7 what gets paid.

8 Q. I would like you to take a look at DX14.11. What are we
9 seeing here?

10 A. Here we're seeing a Facets' medical processing screen for
11 processing a claim. So on the left-hand side it's a pretty
12 simple one we entered showing the simplest information of
13 subscriber and the provider the diagnosis code and such, but
14 this is a Facets medical claims processing screen.

15 Q. And who is it who is actually sitting in front of the
16 computer seeing these screens?

17 A. This would be someone within the health insurance plan.

18 Q. And so that's what the user sees. What is happening behind
19 the scenes with Facets in the software?

20 A. So as they enter all the data and hit F3 to process and F4
21 to save within Facets, all of this information concerning the
22 coverage they picked, their claims history, the Facets
23 underneath it is looking up this provider, seeing which network
24 that provider was in, what's the pricing agreement and such.
25 So hundreds if not thousands of IOs, input outputs, reads

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1 interactions with our database to process this claim and come
2 up with a final amount to then say here's how much is
3 deductible and here's how much is the co-pay, here's how much
4 can be paid to the provider.

5 Q. Does TriZetto have a computer architecture that is
6 developed to handle that data processing and information?

7 A. Yes.

8 MR. ALPER: Mr. Thomas, if you could call up DTX893.

9 Q. And Mr. Noonan, what is DTX893?

10 A. This is our Facets data models guide.

11 Q. Is this for a particular release of Facets?

12 A. Yeah, this was our Facets 5.1 release.

13 Q. Okay. And what is this document used for, the data models
14 guide?

15 A. We use it internally but also share it with customers, and
16 it describes in a technical way the architecture of our
17 database.

18 Q. And when you share it with customers -- actually let me ask
19 a different question.

20 Is this a document that contains TriZetto's trade
21 secrets?

22 A. Oh, yes.

23 Q. And is this a document that you keep confidential?

24 A. Yes, we do.

25 Q. When you share it with your customers, they need to agree

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1 to keep it confidential?

2 A. Yes.

3 Q. And are they restricted in the way that they're allowed to
4 use this? Could they give it to anyone?

5 A. They are restricted. They can't just give it to anyone.

6 Q. And is there anything in this document that reflects that
7 it is a trade secret of TriZetto?

8 A. Yes, yes, I believe -- if you could page down, yes.

9 So we mentioned its copyright, and then under that
10 limited rights notice in that second paragraph in the middle,
11 TriZetto maintains this work as confidential trade secret
12 property.

13 Q. Now let's take a look at some of this -- the other
14 substance in this data model guide. If we could go to
15 DTX893.55, please.

16 So this is entitled Chapter 8, Claim Data Model. What
17 are we seeing here?

18 A. So in effect, the heart of Facets, the beginning of our
19 claim data model.

20 Q. And if we go to the next page, page 56, at a high level,
21 what are we seeing on this page?

22 A. So these are the depictions of our claim tables, some of
23 them. That first one in the center is a key one, but in this
24 data models guide we're showing tables and more details.

25 Q. So we see a number of boxes around the screen. What do

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1 each of those boxes represent?

2 A. So in speaking about relational databases we refer to
3 tables, and tables contain the data. So these were our
4 decisions on how to organize the data into these specific
5 tables, and we made decisions on what should be together in a
6 table or what should be its own separate table.

7 Q. If we could zoom in on this middle the top of the middle
8 table, what's the name of that middle table?

9 A. So this is the CMC_CLCL_claim table.

10 Q. And we see some rows of text inside that box. What do
11 those rows of text represent?

12 A. These represent the data that is on that table.

13 Q. Okay. And then if we see -- if we zoom back out we see a
14 bunch of other tables that are connected by lines radiating out
15 from that middle table, what is that?

16 A. So it's a relational database, so those lines are meant to
17 indicate there's a relationship between these tables that are
18 connected with a line. So on this page the relationship is
19 based on the claim ID, so that upper most point in the CLCL
20 claim table, we have CLC ID, that character 12, that's a key
21 field, and that's how these tables -- they have that in common,
22 that's their relationship.

23 Q. And why do you need to have separate tables -- actually,
24 let me ask that a different way.

25 Why did you decide to have separate tables instead of

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1 just one big table with all the data in it?

2 A. We could have had different table layouts, but we've made
3 decisions based on the type of data. Some things come in at
4 we'll call it at a claim level, some things meet occur multiple
5 times, like lines on a claim, maybe on that office visit they
6 also gave you a flu shot, that would be another line. So by
7 making use of this table structure and relational database,
8 we're able to have data grouped efficiently for processing.
9 And that needs to be done in a way that can support claims
10 processing quickly as well as all the other times when maybe
11 there are inquiries into the database. So as the transaction
12 is processed, that might have us design things one way, but
13 knowing that there's also going to be inquiries, reports from
14 the database would have us adjust that design at times. So
15 there's a lot that goes into all of these decisions.

16 Q. If you look at the upper right-hand corner it says page 1
17 of 13. What are the other twelve pages of this section on
18 claims?

19 A. You said it right, all on claims. So if we page through,
20 these are all different claims domain tables.

21 Q. And how long is this data model guide all together?

22 A. I believe it's at least, I will say, 200 pages.

23 Q. And would we see the same level of detail in term of the
24 architecture of tables and the fields throughout the entire
25 document?

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1 A. Yes.

2 Q. How many tables are there in Facets in all?

3 A. Approximately 2,000 tables.

4 Q. And how many fields within those tables?

5 A. I would say tens of thousands.

6 Q. In your experience working on databases for the last
7 several decades, how complex and large is Facets compared to
8 other databases?

9 A. This is very large and complex. I know our customers have
10 told us that when they're using Facets that with the volumes of
11 data they work with that they're into the multiple terabytes of
12 data.

13 Q. And how much work went into developing this Facets
14 architecture and the tables and fields and relationships?

15 A. This is an accumulation of over 25 years of work.

16 Q. And how much has been spent over the years on research and
17 development on Facets?

18 A. I believe it's upwards of 500 million.

19 MR. ALPER: Okay. I'm going to shift gears, but I
20 would like to ask your Honor if I should --

21 THE COURT: I think this is a good time for us to
22 break, so thank you for asking.

23 Ladies and gentlemen, just a reminder, don't talk
24 about the case or communicate about the case with anybody.
25 We're starting an hour later tomorrow which means we're

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1 starting at 11:00, so I would like everybody to be here in the
2 jury room by quarter of 11:00.

3 I will tell you about one of my practices, I apologize
4 in advance for it, but here's what I do. We come out at 11:00
5 to start because that's our start time. If anybody is not
6 here, whether it's a juror, whether it's a lawyer, we'll sit
7 here and wait for you in the courtroom, which is a little
8 awkward. If that ever happens, it never happens again.

9 So I would just encourage everybody to be on time.
10 Your time, frankly, is the most precious thing we have and we
11 try really hard not to waste it. I will see you tomorrow at
12 quarter of 11:00, we'll try to go until 4:30 or 5:00 tomorrow,
13 and have a good evening.

14 Thank you. We would normally stand to show respect to
15 you all but we don't stand with Covid, so you can stand and
16 leave.

17 (Jury not present)

18 THE COURT: Mr. Noonan, you may be excused.

19 (Witness not present)

20 THE COURT: I know you all have been here all day, but
21 perhaps you've been communicating with others. I want to find
22 out, perhaps you've already filed it, but where we are on
23 getting a revised jury charge for the main claims?

24 MR. DE VRIES: Your Honor, I know the teams have been
25 working on that today. We received an updated draft yesterday

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1 and I believe that there's been an exchange today. So my
2 belief, unless someone knows differently, is that we will be
3 submitting to your Honor today the results of that back and
4 forth. I don't believe everything has been resolved, at least
5 last that I heard, but we'll keep trying to resolve as much as
6 possible.

7 THE COURT: Okay. Were you planning on getting me a
8 revised verdict form?

9 MR. DE VRIES: Yes, your Honor.

10 MR. GROOMBRIDGE: Yes.

11 THE COURT: What was your planned timing for that?

12 MR. DE VRIES: Tonight as well.

13 MR. GROOMBRIDGE: Tonight as well, your Honor.

14 THE COURT: Okay. Great. All right. And is there
15 anything that anyone needs or wants to raise?

16 MS. CARSON: Your Honor, we have a number of witnesses
17 going tomorrow, and --

18 THE COURT: Actually we're supposed to have you sit
19 down. Have a seat and use the mic, please.

20 MS. CARSON: It's very hard.

21 THE COURT: I know it's habit.

22 MS. CARSON: We have a number of witnesses going
23 tomorrow, and Syntel has objected to a number of the
24 demonstratives. I have been checking my email to see if we
25 have been able to work some of it out. I just don't want you

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1 to be surprised tomorrow if we haven't been able to work it
2 out, but I think we did make a proposal to them on most of
3 their objections.

4 THE COURT: What you need to do, though, is tell me --
5 I'm going to start at 11:00, and unfortunately the reason we're
6 starting late is because I can't start before then. But you
7 need to tell me if there are issues that I need to resolve, and
8 you need to tell me tonight so that I can do that tonight or
9 early tomorrow.

10 MS. JANGHORBANI: Your Honor, I believe there are
11 issues that we need to resolve in connection with
12 demonstratives and testimony that will we're likely to go over
13 tomorrow.

14 THE COURT: So when are you in a position raise them?

15 MS. JANGHORBANI: I'm happy to address them now.

16 THE COURT: Let's do that. That's very efficient.

17 MS. JANGHORBANI: Yes, your Honor.

18 MR. DE VRIES: Your Honor, maybe I'll ask, there's a
19 member of team prepared to address that, one practical issue we
20 wanted to know is how that member of the team could -- can they
21 come up to the podium at the appropriate time?

22 THE COURT: Are they here in the courtroom?

23 MR. DE VRIES: Yes.

24 THE COURT: I don't know. We need that person to be
25 in front of a mic. So perhaps that mic is the one that makes

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1 sense since it's free, but we need to remove the mouthpiece
2 from the mic. But the HEPA filter has been going for a while,
3 so that's good.

4 MR. DE VRIES: I could also move if that's a better
5 solution. I didn't want to do it incorrectly.

6 THE COURT: No, this is a different world for all of
7 us.

8 And you're Mr. --

9 MR. HERBERT: I'm Mr. Herbert, and I'm here to address
10 the claims related to Dr. Bergeron on behalf of Cognizant and
11 TriZetto. I will be addressing the objections to
12 Dr. Bergeron's slides, and Ms. Carson will be addressing the
13 objections to Mr. Britven.

14 THE COURT: Would it make sense for us to hear the
15 objections first?

16 MS. JANGHORBANI: I think that make sense, your Honor.
17 I don't know if one of the courtroom techs could put up the
18 Dr. Bergeron slides so your Honor could see them.

19 So your Honor, you will recall we had a motion in
20 limine related to Dr. Bergeron, and you indicated that
21 Dr. Bergeron can provide testimony on whether TriZetto's
22 confidential and proprietary information constitutes trade
23 secrets, whether Syntel used TriZetto's confidential and
24 proprietary information, and whether Syntel's source code is
25 similar to the Data Dictionary. We're not disputing any of

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1 that.

2 But what it would appear from the slides that we
3 received last night that they intend to use Dr. Bergeron
4 essentially as a sort of super juror who is going to take
5 emails from the record not related to the use of trade secrets
6 and interpret what it is that they mean for the jury, or in the
7 instance of certain emails that are related to the use of trade
8 secrets, interpret what the motives of the folks sending those
9 trade secrets might in fact be.

10 So if you want to look first at Slides 7 through 10.

11 THE COURT: Do these slides reflect the accommodations
12 that TriZetto has proposed or not yet?

13 MS. JANGHORBANI: I do believe there are some issues
14 that have been taken off of the table due to these
15 accommodations. These are the ones I understand to still be
16 live.

17 THE COURT: So we're looking at DDX 2.7.

18 MS. JANGHORBANI: Right. From 7 to 10 what occurs
19 here is that Dr. Bergeron intends to narrate a story from a
20 series of emails about Syntel's plan to compete against
21 TriZetto. Now all of these emails are, of course, in the
22 record, and obviously TriZetto can argue that, but we object to
23 the use of Dr. Bergeron in his expert capacity getting up there
24 and interpreting emails that the jury is perfectly capable of
25 interpreting themselves. So that would be our objection to

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1 these three.

2 THE COURT: I understand.

3 Mr. Herbert?

4 MR. HERBERT: Dr. Bergeron, in addition to being a
5 medical doctor and someone with vast experience in computer
6 technology and programming, is also the president of his own
7 company that is in this field. This is evidence that that's
8 directly related to the use of trade secrets. He is going to
9 talk from a technical perspective about what these emails mean
10 in terms of the tools that are referenced, and in DDX2.7 he
11 will talk about what it means in the context of these tools are
12 a key part of the strategy.

13 THE COURT: So just give me an example what would he
14 say, for example.

15 MR. HERBERT: This slide is essentially introducing
16 the next slide. This is the email that the claim is attached
17 to. And the next slide, DDX2.8, and he's talking about how
18 this email, from his technical perspective and also being
19 someone who is the president of a company in this space, shows
20 that in 2012 they had this plan that was built on tools and
21 accelerators. And those are the exact same tools and
22 accelerators that we have alleged that Syntel misappropriated
23 TriZetto's trade secrets to build.

24 So he is going to testify that this plan includes
25 using the TriZetto trade secrets to build these tools and

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1 accelerators. And without that testimony tying these tools and
2 accelerators to the trade secret issue in the case, the jury,
3 we feel, will be at a loss. So his expert testimony is going
4 to help them understand how this relates to the trade secret
5 issues and it's also directly related to the use of those trade
6 secrets because this is circumstantial evidence of why they
7 were misappropriating trade secrets.

8 I also note all of this is disclosed in Dr. Bergeron's
9 expert report, and the Daubert motion that Syntel filed did
10 reference that he was making an improper factual narrative. We
11 directly addressed that issue in our opposition, and your
12 Honor's opinion did not exclude that testimony; instead, he was
13 allowed to testify about use of the trade secrets. This is
14 directly related to the use of circumstantial evidence.

15 MS. JANGHORBANI: Your Honor, if I may briefly.

16 THE COURT: Yes.

17 MS. JANGHORBANI: I agree that Dr. Bergeron is
18 entitled to testify about the tools, but this whole idea -- I
19 tried to catch the words as he said it, that the tools are a
20 key part of Syntel strategy, Dr. Bergeron has not been offered
21 as a business strategy expert or anything of the kind. He was
22 offered as a medical technology expert to speak as to the
23 nature of whether this information is trade secrets and whether
24 or not Syntel used it. I.

25 I also just want to flag what he just said, that

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1 Dr. Bergeron wants to testify that this is circumstantial
2 evidence of something. That is in fact a turn of phrase that
3 shows up throughout Dr. Bergeron's report. And once again, I
4 submit that that is not the appropriate role of an expert.
5 This evidence can go before the jury, he can testify about that
6 to which he is an expert, which is what your Honor recognized
7 in the MILs, but he should not be saying this is circumstantial
8 evidence of this or this is what Syntel must have been planning
9 and here's why it was nefarious.

10 THE COURT: I assume he's not going to say that.

11 MR. HERBERT: Your Honor, the words "circumstantial
12 evidence" will not come out of his mouth. I was merely
13 explaining to your Honor why this evidence is actually related
14 to the use of the trade secrets.

15 As you know --

16 THE COURT: I will stop you there.

17 So what we purport to be arguing about is the
18 demonstratives, but it sounds like what we're really arguing
19 about is his testimony. As I understand it, this has been
20 disclosed, I will allow it.

21 Do we have another?

22 MS. JANGHORBANI: We do, your Honor, which is another
23 set where we go to, I think 16 where it begins.

24 Now again, your Honor, this is probably an instance of
25 our fighting over the testimony rather than the demonstratives,

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1 but I do think it's likely to come up so I wanted to raise it
2 with your Honor in advance.

3 THE COURT: I appreciate that.

4 MS. JANGHORBANI: It would appear from 16 through 19
5 and then a handful of slides further into the deck that
6 Dr. Bergeron intends to testify as to the intent or motive of
7 folks who were sending these emails. Now Dr. Bergeron is not a
8 psychologist or a psychiatrist, he does not know anything about
9 these individuals beyond what evidence is in the record, and I
10 would submit it's improper for him to be testifying about the
11 intent or the motive, and that's really a usurpation of the
12 jury's function here.

13 THE COURT: I suspect I will not hear that he's not
14 testifying about intent or motive but about what happened, but
15 let me hear what you have to say.

16 MR. HERBERT: Exactly, your Honor. He's not going to
17 testify that the intent, for example, of that, the intent of
18 sending this email was to cover up, what he is going to say is
19 based on his review of the evidence that this email indicates a
20 cover up. That is what he's going to say. He's going to say I
21 looked he evidence, here's the email, they used this dollar
22 sign, and in my review of this evidence and experience --

23 THE COURT: Is that an opinion he expressed in his
24 report?

25 MR. HERBERT: It is, your Honor, there's an entire

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1 section in his report that deals with additional evidence, and
2 these are emails that are expressly called out in that section,
3 and it is related to --

4 THE COURT: Does he provide the opinion that the use
5 of the dollar sign would foil electronic searches?

6 MR. HERBERT: He does, your Honor.

7 THE COURT: Okay.

8 MS. JANGHORBANI: Your Honor, I would submit the point
9 of saying that a dollar sign would foil electronic searches,
10 that's fine, but suggesting that he included -- Mr. Chadha
11 included the dollar sign for the purpose of or in order to --

12 THE COURT: I understand. So I would ask you to be
13 careful in the phrasing of your questions and also to speak to
14 him in advance so that we don't have objections. I think what
15 you're proposing is fine as long as he doesn't step over the
16 line that Ms. Janghorbani was objecting to.

17 MR. HERBERT: Could I ask one point of clarification?

18 THE COURT: Sure.

19 MR. HERBERT: If he is asked how is this evidence
20 indicative of a cover up, and his response is essentially from
21 the evidence I have seen --

22 THE COURT: I wouldn't ask how is it indicative of a
23 cover up. That's a leading question and he'll be on direct.
24 You might say: What does using the dollar sign in the middle,
25 what's the significance of that or the impact?

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1 MR. HERBERT: Understood, your Honor.

2 THE COURT: So I will allow that.

3 Another objection?

4 MS. JANGHORBANI: The next objection is -- I apologize
5 because I did see some emails flew around during the day, but I
6 think this one is still live as well, DDX2.20.

7 THE COURT: Let's have somebody confirm.

8 MR. HERBERT: My understanding this is still live.

9 MS. JANGHORBANI: Our only objection, here, your Honor
10 is that Dr. Bergeron doesn't need to vouch for the
11 qualifications of the forensic examiner. I don't think that we
12 intend to argue that the forensic examiner is not a qualified
13 forensic examiner. So we don't need to have Dr. Bergeron up
14 there touting his various experience, which presumably --

15 THE COURT: He will do himself.

16 MS. JANGHORBANI: Right.

17 MR. HERBERT: Dr. Bergeron is in fact not going to
18 testify to his qualifications. They're just listed on the
19 slide for information for the jury, and also support why he
20 relied on this, based on these qualifications. So there's
21 going to be no testimony about these qualifications, they're
22 just shown on the slide.

23 MS. JANGHORBANI: If he's not going to testify about
24 it, take them off and put them on the closing slide.

25 THE COURT: Or he could use it during Mr. Rubin's

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1 testimony, but I wouldn't use them during -- it feels a little
2 like gilding the lily and it's not an opinion of his.

3 But what he can say is I relied on -- if he did, I
4 relied on the findings of Samuel Rubin specifically on these
5 findings, and you can list the findings.

6 MR. HERBERT: Thank you, your Honor, understood.

7 MS. JANGHORBANI: The next objection, your Honor, and
8 it's probably more in the nature of a preservation objection,
9 which is Dr. Bergeron is going to speak repeatedly about the
10 use of these materials in advertising. As you know, we've
11 maintained the position that advertising does not constitute
12 use under the law. We don't think the testimony is
13 appropriate.

14 MR. HERBERT: On this point, this is, from our
15 perspective, now the law of the case. This was raised by prior
16 counsel in opposition to our motion for summary judgment that
17 advertising was by law not a use. That was rejected squarely
18 in the magistrate judge's R and R, which her Honor adopted in
19 full. So from our perspective, it is a decided issue.

20 THE COURT: I don't think there's any dispute about
21 that.

22 MS. JANGHORBANI: One final issue, which is not really
23 in the nature of an objection, it's more that you asked that
24 the parties flag if they had concerns that someone may be
25 opening the door to something. And from the slides it's not

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1 apparent, but I'm putting it out there so I can't be accused of
2 not raising it ahead of time.

3 On slide 34 to 37, these fit squarely into the zone of
4 preclusion order. And so as I understand it, your Honor, we
5 can't argue any sort of independent creation of our tools and
6 we can't argue that we didn't copy the test cases or the
7 scripts. They can put them up, show they're the same. So what
8 I'm concerned about is, one, to the extent that they put them
9 up and showed that they're the same, I assume I am allowed to
10 cross on the ways that they are different.

11 THE COURT: That's an interesting question. Let me
12 hear your view.

13 MR. HERBERT: Your Honor, from my perspective, and I
14 asked last night in the meet and confer to give the example,
15 because I think preclusion order is quite clear, and I also
16 think that your Honor's opinions on this issue with respect to
17 the MILs, it is quite clear that we could argue through
18 witnesses that there was no evidence of any independent
19 development, and that in response, Syntel could say nothing.
20 So from our perspective, there is no opening the door. We are
21 allowed to say this and Syntel cannot proffer evidence in
22 response.

23 THE COURT: So I guess what's troubling me is if -- I
24 don't know what this particular evidence actually says, and
25 yes, you're right in your characterization of what I have said

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1 and what I intended to do in the motions in limine. But let's
2 just imagine, for example, that they were totally different,
3 and that's a different argument and one that might be
4 permissible. So I guess it depends on what the evidence is.

5 Can someone help me with that?

6 MR. HERBERT: From my perspective, Dr. Bergeron will
7 be indicating that he has seen no evidence of independent
8 development. In response to that statement, it would be our
9 position that Syntel cannot then put forward evidence.

10 THE COURT: That's true.

11 MR. HERBERT: If they want to try and -- for example,
12 what is shown on demonstrative DDX2.36, if they would like to
13 try to point out that there is not an identical similarity
14 between these two, I let them at it. I think they will be
15 unsuccessful.

16 THE COURT: Okay. So I agree with everything that I
17 just heard Mr. Herbert say. I'm not sure it's necessarily
18 inconsistent with anything that I heard you say.

19 MS. JANGHORBANI: I think that's right, your Honor. I
20 want to raise just one more thing. What I heard him to be
21 saying is that we can, in fact, argue that these two things are
22 not the same.

23 I would also raise this issue of independent creation
24 of tools. I think that as I understand it -- and I understand
25 what counsel is saying, and maybe I don't understand what

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1 counsel is saying, but they are obviously going to argue that
2 there's no independent creation. However, I think that to the
3 extent that they directly contradict something that was in fact
4 seen by Dr. Bergeron or whatever, that would open the door.

5 Now I can't say: Hey, my folks independently created
6 something. But if he were to put something up and say this was
7 not independently created and I saw nothing that supported
8 that, I could cross him on the thing that would in fact support
9 that, or no?

10 THE COURT: No.

11 MS. JANGHORBANI: Okay, thank you, your Honor.

12 THE COURT: Sure. Anything else regarding
13 Dr. Bergeron?

14 MS. JANGHORBANI: Not from me, your Honor.

15 THE COURT: All right. Okay.

16 So Mr. Britven.

17 MR. GROOMBRIDGE: Your Honor, I think we have -- I
18 apologize because I just now tried to skim through today's
19 emails, but here's where I think we are: I think we resolved
20 some things. I think we have two remaining disputes.

21 I think, according to the emails that I have been
22 looking at, I think one of them is about Slide Number 8. So I
23 believe that this suggests that Mr. Britven is going to testify
24 that Syntel incurred zero development costs, and the issue we
25 think, your Honor, is it's not in his expert report. And it

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1 seems to us that is capable of an answer, and maybe counsel
2 could confer this evening, and if they could show us where it
3 is in his expert report, maybe this gets resolved or not. But
4 that's the nature of the dispute. I don't have his report with
5 me, and I think it would be probably more productive if we
6 engage on that and see where we come out. But, of course, I'm
7 amenable to whatever your Honor thinks is the best.

8 THE COURT: Unless Ms. Carson can point to it right
9 now. I don't mean to put you on the spot and say this is your
10 only chance, but if it saves us coming back to it, that would
11 be great.

12 MS. CARSON: Your Honor, we have a proposal that I
13 think will address this, that it is in his report. Because
14 what Mr. Britven has said is there isn't any information about
15 R and D. And so I think that we could just change this and get
16 rid of the zero dollars and that would simply no longer convey
17 zero dollars.

18 THE COURT: I will let you discuss that with them.

19 MS. CARSON: Okay.

20 MR. GROOMBRIDGE: Thank you, your Honor.

21 The only other issue I think pertains to slides 33 and
22 35. This frankly may be again in the category of a
23 preservation objection. Your Honor will recall, I expect, that
24 Mr. Britven has first of all avoided the cost number. And then
25 he says as an alternative I have a reasonable royalty, which is

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1 I take a 50/50 split of the avoided costs.

2 In our view, the law is -- in case it matters, I will
3 give what seems to be the most significant case, which is
4 *VirnetiX v. Cisco Systems, Incorporated*, 767 F.3d, 1308,
5 1331-34 (Fed. Cir. 2014) squarely holds that you can't -- it is
6 impermissible as a matter of law to calculate reasonable
7 royalty that way. I understand there have been prior -- this
8 issue has come up previously in the case. What we want to do
9 is make sure that by failing to place an objection on the
10 record we're not subsequently going to be held to have waived
11 that issue.

12 THE COURT: Okay. Did you want to say anything in
13 response?

14 MS. CARSON: Your Honor, our first point is this would
15 have been a Daubert issue and it is waived. But more than
16 that, what Mr. Groombridge is actually talking about is
17 applying the *Georgia Pacific* factors to get to where the
18 parties are on an even playing field. So we don't believe that
19 that his analysis is contrary to law either.

20 THE COURT: Did this go to these particular slides?

21 MS. CARSON: Yes, I believe they're objections to
22 these two slides.

23 THE COURT: All right. So I will accept it as you're
24 preserving your record and you may use the slides.

25 And what I would ask is if you aren't able to resolve

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1 the slide, I think it was Slide Number 8, if you could just, as
2 soon as you know that, even if it's whatever crazy hour it is,
3 put it in a letter and please file it with your respective
4 positions so that I could try to get you a ruling perhaps early
5 tomorrow morning so you could revise the slide before we
6 actually have the testimony.

7 Is that testimony before lunch or after?

8 MS. CARSON: It will almost definitely be after lunch
9 because Mr. Britven is our last witness.

10 THE COURT: It sounds like there will be time.

11 MR. GROOMBRIDGE: It's conceivable it won't even be
12 until Wednesday morning, so we'll see how that goes.

13 THE COURT: That sounds good.

14 Anything else that we need to talk about? We all know
15 who the witnesses are tomorrow consistent with the most recent
16 witness list we got.

17 MR. DE VRIES: Yes, your Honor.

18 THE COURT: And you all have exchanged exhibits for
19 those witnesses.

20 MR. DE VRIES: Correct.

21 THE COURT: All right. Then we'll see you all
22 tomorrow.

23 MR. GROOMBRIDGE: Thank you, your Honor.

24 MR. DE VRIES: Thank you, your Honor.

25 (Adjourned to October 20, 2020 at 10:45 a.m.)

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Direct By Mr. Alper59